

3-1985

# The Advocate

The Advocate, Fordham Law School

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# The Advocate

## FORDHAM UNIVERSITY SCHOOL OF LAW

VOL. 17 NO. 2

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MARCH, 1985

### In The Jesuit Tradition: Have You Ever Thought About Volunteering?

This year marks the first major opportunity for the Office of the Chaplain to exist in a decent and accessible office, with four chaplains for personal advising, and to serve the students of the Law School in a new way. The office, which is between the SBA office and Career Planning, will serve as the center for volunteer service information. These will be non-credit opportunities sent to us from time to time by people and agencies needing help. The time requested can be as little as one hour per week, one night a month, or it can be as much as it is possible for you to make it. So, we are not talking about a major commitment. It could be work related to legal assistance or it could be time spent feeding and caring for the homeless at St. Paul the Apostle (265-3209 Westside) or St. Ignatius (288-3588 Eastside). I might even add joining the folk group at the Law School Mass on Wednesdays at 12:30 in the Lowenstein Chapel: a delightful type of *pro bono* activity.

For those interested, a binder will be left in the chaplain's office containing what we get in the mail, and we will soon have a bulletin board where we will begin posting notices. Also available to us from the Commission on Voluntary Service and Action is a catalogue of volunteer opportunities called *Invest Yourself 1985*.

This article is also a call to those law students who have done volunteer work (such as Jesuit volunteer Corps, the Peace Corps) and/or who are presently doing some volunteer work to identify themselves to me by a visit or

note (012 Law School or 224 Lowenstein) or call me at 841-5160 (ext. 160 on inside phone). I need your help in seeing with clarity what we can honestly do together to raise consciousness in the matter of conscience and moral responsibility as enunciated by Supreme Court Justice Sandra Day O'Connor at the dedication on October 24, 1984.

I have been assured by a group of students that there is interest in such a venture among a small group of students. If we could get a community service group started, we might just be able to foster a worthwhile, hands-on "distraction" as one person termed it. This could be an opportunity to grow in a way which offers some relief in the inexorability of the study of law. This can also be a way of getting to know other law students, and building contacts outside of the law school. It would certainly provide a fresh entry on tired resumes.

Along those lines, I can report that our first experience of this community service occurred with the successful Ethiopian Relief Drive which netted approximately \$1,000.00 in donations and pledges. Bob Altman and Laura Blackman, together with Dean Hanlon, Rabbi Belzer, and twelve students worked to achieve that success. In the near future Richard Beigen will launch into a campaign to help the homeless in the shelter at St. Paul the Apostle Church on Columbus Avenue and West 60th Street. Hopefully more suggestions and opportunities will be forth-coming.

By Rev. Edward G. Zogby, S.J.



### Retrospective: Dean Feerick's Role In The Twenty - Fifth Amendment

BY DAVID HEIRES AND GLENN BUSCH

The subject of presidential succession and disability has never been one to be taken lightly. Since the dawn of the nuclear era, however, the necessity of dealing effectively with the contingencies of a presidential or vice-presidential vacancy or a president being unable to discharge his duties has been considered to be a matter of much greater urgency than it was at any other time in our history.

In the present context, people may disagree as to the likelihood of these contingencies occurring in light of President Reagan's age. Yet no one can deny that they were germane when there was an attempt on his life four years ago. Though he survived the attack, Mr. Reagan was unconscious for a period of time after having been administered an anesthetic. Vice-President Bush was thousands of miles away, Secretary of State Haig made some ill conceived remarks about who was in charge, and Secretary of Defense Weinberger said he was next in line in the chain of military command.

Vacancies did in fact occur during the Watergate crisis, when not only the president, but the vice-president as well, was forced to resign. At no other time in our history had both the president and vice-president failed to complete their terms.

During 39 of our first 178 years, there was a vacancy in the office of the vice-presidency for lack of a constitutional provision for vice-presidential succession. As for the eventuality of presidential disability, the relevant clause in Article II of the Constitution was difficult to interpret due to its vagueness. The main shortcoming was a failure to designate who was to make the requisite determination.

By passing the Twenty-Fifth Amendment, Congress set in motion an effective mechanism for dealing with vice-presidential succession and presidential disability. The amendment was ratified in 1967, and it worked masterfully in bringing about an orderly transition of power after the Nixon and Agnew resignations. Fur-

thermore, in spite of Secretary Haig's ill-advised comments, those in a position to know agree that the machinery of the executive branch was in control of the situation when President Reagan was under anesthesia. This was due to the Twenty-Fifth Amendment's providing a specific reference point for the smooth transition of power from the president to the vice-president in the event of presidential disability. The amendment states that the vice-president and a majority of the cabinet officers are the persons authorized to declare that the president is unable to discharge his duties. If the president later declares himself fit, and this contention is disputed by the vice-president and cabinet, Congress makes the decision.

One person who played a role in bringing about the passage of the Twenty-Fifth Amendment is none other than Dean Feerick. A recognized scholar on the presidency and vice-presidency in general, and presidential succession and disability in particular, Dean Feerick served on the ABA Committee on Presidential Inability and Succession which was formed shortly after President Kennedy's assassination. After reaching a consensus, this twelve person committee worked closely with the Senate Subcommittee on Presidential Succession chaired by Senator Birch Bayh in drafting the amendment and bringing about its passage in Congress and ratification by the states.

During the time of his most intensive involvement with the Bayh Committee, Dean Feerick was the recent author of two works in the Fordham Law Review, both of which attracted considerable attention in the wake of the Kennedy assassination. The first article, *The Problem of Presidential Inability - Will Congress Ever Solve It?* (October 1963), led to his invitation to join the ABA Committee. The second, *The Vice-Presidency and the Problems of Presidential Succession and Inability*, was published in March, 1964.

(Continued on page 11)

### CAREER PLANNING TIDBITS

Nearly 160 women students and alumnae Arleen LaBella's presentation on February 13 entitled "Image and Personal Power" in the amphitheater. The Law Women hosted a cocktail party in the Atrium afterwards.

Participants were unanimous in their enthusiasm for the program. The videotape of the presentation will be shown during the next two months - in case you missed it! Check our bulletin board for details!

A July reception for Class of '86 & '87 students and employers visiting the campus this Fall (and utilizing the job books) is being planned. Students will have the opportunity to pick up all published materials to help them prepare for FOCI and to meet interviewers, hiring partners and recruitment administrators at a reception in the Atrium. Watch for details!

The Annual Alumni Luncheon at the Waldorf-Astoria is to be held Saturday, March 2.

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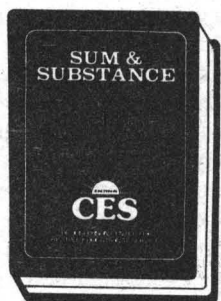
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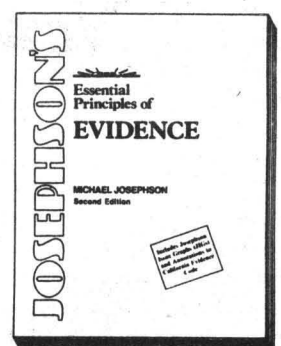
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## Intramural Hoop Provides The Cure for The Wintertime Blues

BY GENE MURPHY

Bulletin boards have been secured to the walls throughout the school. Some of them display information for one of the three journals, others for the Placement Office, and still others for the Moot Court Board. Yet, none of them, not even our newly installed mailboxes, earn the attention that the weekly posting of intramural basketball standings invariably attracts. The basement level SBA bulletin board is regularly surrounded by a group of students checking out the latest scores and discussing the previous night's battles. What is it about intramural basketball that makes it so consistently popular each year and just how close was this league from joining the not so exclusive ranks of "the defunct?"

In the wake of this past summer's demolition of Power Memorial H.S., the league was faced with the difficult task of finding another suitable location for the favorite intramural of the law school. There was some talk of playing at Rosehill in the Bronx and other proposals included various Manhattan locations. Although the facilities at these potential sites were more than adequate, they generally had two substantial drawbacks—too expensive and too far!

Fortunately, Intramural Basketball Commissioner Tom Ryan and SBA Treasurer Anthony Laura, after a short struggle through the municipal sea of bureaucracy, managed to arrange a deal with the city which may very well have saved the league from falling. P.S. 191, on Amsterdam Avenue and 61st Street, became the new site of intramural basketball for Fordham Law School.

Ryan and Laura's efforts resulted in each player's paying a nominal registration fee of \$10. P.S. 191 clearly meets the two critical prerequisites of the students—reasonable cost and close proximity to school. As Ryan points out, "P.S. 191 is a great deal! The gym is worth double what we are paying for it now."

In addition, considerable improvements have been made to the structure of the league itself. First, the league has become more competitive in extending the winning score from 20 points to the current 30 points. Further, each team plays one night a week, Wednesday or Thursday depending on what division the team is registered. Last year games had been scheduled on the weekends and even during the spring break. This caused a substantial number of conflicts for many of the league's players thus hurting the effectiveness of certain teams on a given day. This year's schedule has virtually precluded such conflicts.

One of the more unique aspects of this organized league is that there are no referees present. "Teams must call the fouls themselves

and just play their game," notes Ryan. "If the other team makes a call, the opposing team should respect it no matter what." This standing rule is generally followed, however, in close games arguments will inevitably arise especially when the players are a group of aspiring lawyers.

The league currently consists of 16 teams who play either Wednesday or Thursday night between 6:00 and 10:00. The Wednesday division consists of Diversity Jurisdiction, the Geeks, the Brethren, Touhey's Dogs, the Nighthawks, the Whitefish, International Shoe, and The Curse. The Thursday division teams include the Buffalo Soldiers, F.U. Law, Vanilla Thunder, Foot'n It, Gorax, the Fudgepackers, Team Six, and Van Halen.

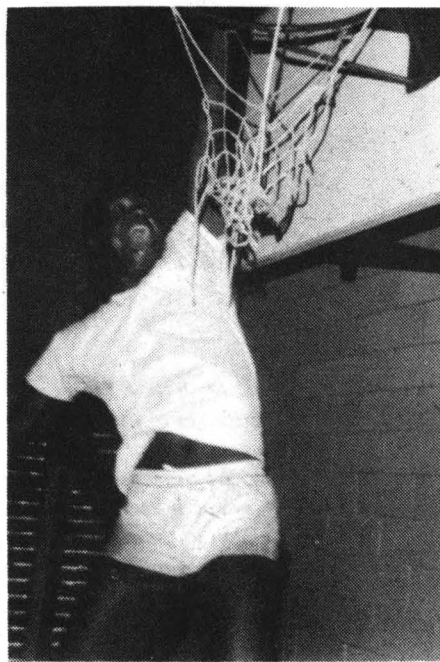
Each team is scheduled to play at least one game against each of the other teams in its division and then the top four teams of each division will compete in an interdivisional playoff. Commissioner Ryan also hopes to get several volunteer referees for the duration of the playoffs.

Setting the standard for the rest of the league, and their fellow second year students, Diversity Jurisdiction plays topnotch competitors like Sam Watkins and Tim Coleman. Being the defending champions of last year, Diversity Jurisdiction has been marked as the team to beat. Those willing to take that challenge include other second year teams such as the Brethren and Borax.

The Brethren, who also compete in the intramural football league during the fall, just missed a shot at Diversity Jurisdiction in the finals last year. New additions such as third year John Parada and second year Dave McCarthy strengthen their height and power under the boards which, but for the presence of Rick Sapir, they sorely lacked last season. Gorax, too, under the consistent shooting of John Sinidinos, hopes to break Diversity Jurisdiction's hold on the championship.

The Buffalo Soldiers represent the most formidable force from the third year class this year. Their standouts include players like Conrad Jordan, Randy Sunshine, and David Howard. A game with these guys is guaranteed to define the meaning of physical as the Buffalo Soldiers are not ones to readily relinquish control under the boards.

Not to be overlooked by the upperclassmen, standout first year teams such as the Geeks, F.U. Law, and Vanilla Thunder have started the season with trusty impressive records of their own. The Geeks, who play in the Wednesday division, played Diversity Jurisdiction earlier in the season and gave them



Sam Watkins of Diversity Jurisdiction.

a game to remember. Although the Geeks did not win, Diversity Jurisdiction can count on their formidable presence in the playoffs.

It's no wonder this league has become as popular as it has over the years. The intramural basketball league draws well over 150 students to its court which is undoubtedly more than any other extracurricular activity of the law school. Commissioner Ryan further emphasizes, "It provides the students with a means to release the pressures of law school—especially for the first year students. It gives them a chance to get physical and take a breather from their constant study of the law."

Finally, these games can be as much fun from the stands as they are on the court. Ryan and Laura encourage other students and faculty to come on down and join the fun. After a few minutes as a spectator you will see why this has become the most popular activity at the school of law!

## DON'T JUST SIT THERE!

BY ROBERT ALTMAN

As the school begins to come to a close, I cannot help but notice a difference between this school year and the last one. The previous school year had a number of student organizations sponsoring a number of events. This year while there have been a fair number of fine events, school organizations have not had anywhere near the amount of events they had last year. Some organizations look as if they are in danger of extinction. Why?

Last year the class of '85 came into their second year with a burst of enthusiasm and drive that no succeeding class may ever match. Fordham Follies, Entertainment and Sports Law Council and the Fordham Democratic Law Student Association all provided the school with new and different perspectives. Entertainment and Sports Law had 300 people attend an event. The Fordham Follies produced an enormously successful play. The F.D.L.S.A. brought a number of fine politicians to the school. The Advocate changed from a pathetic leaflet to a legitimate school newspaper. Other school organizations continued their past activities.

This year the bubble burst. New members are tough to find. The Advocate can't seem to find any new blood to take over the paper. There are fewer events from all student organizations. The S.B.A. had resignations from both its treasurer and secretary. Some organizations exist only in name. I think I know a few reasons why.

First of all, many of the leaders of student organizations (myself included) are consumed in a job search. Many do this while they work and go to school. Less time is then spent with a student organization. Work and school consume a decent quantity of time.

A second reason is the failure of non-graduating students to take up the slack. I recently heard from a member of the Administration that some students in their first and second year wonder why more isn't happening

## THE FORDHAM FOLLIES RETURNS!

The Second Annual Fordham Follies will be held on April 2nd and 3rd at 8:00 p.m. in Pope Auditorium. The Follies is a student-run organization which produces an original musical comedy satirizing life at Fordham Law School. It may be surprising to realize that our student body is comprised of many talented men and women. This event enables us to work together on something other than traditional law school activities, and to have fun in the process.

Auditions for this year's show were held in late February, and the major roles have been cast. However, anyone who is interested in being in the chorus or assisting in any capacity (e.g., stage work, selling tickets, etc.) may contact Sheri Doyle at 212-722-0442, or Louise Firestone at 212-749-7496, or leave a note in one of their mailboxes.

Tickets for the show will be \$3.00, and will be available in advance and at the door. There will be a TANG following the April 3rd performance. We're looking forward to a great show....DON'T MISS IT!

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The Advocate Office or Leave Your Name,  
Section and Phone Number  
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# The SBA: A Call To Action

The time for elections to the Student Bar Association has rolled around once again, with its attendant discussion and debate. There has been considerable criticism of the SBA over the past year. At the same time, there are increasing complaints about student apathy.

One problem which everyone must recognize is the difficulty in reaching a consensus about what functions FLS student government should perform. Some people maintain that the "school spirit" of high school and undergraduate institutions cannot be present in the same fashion at law school, particularly an urban commuter school such as Fordham. Consequently, the scope of the SBA's activities will necessarily be limited. Others disagree on specific points, such as whether there should be more off campus parties or whether the SBA should be more involved in matters affecting the curriculum.

Nevertheless, most people contend that the SBA should have done more over the last year. Those who talk about the problem of "school spirit" must note something which follows directly from the very point they are making about the difference between law schools and other institutions. It is not a question of high school parties; rather, it is a question of law school functions. As prospective young professionals, we are aware that our future social life will in many respects overlap with, or, better put, reflect our professional life. When we attend events such as career symposia or cocktail parties in the atrium, or listen to visitors speak on campus, most of us are not going just for the refreshments.

Moreover, it is hard to contend that when students feel strongly about academic or administrative matters there is anything wrong with having an SBA which will effectively voice student concerns to the administration.

At this point, it is appropriate to discuss briefly some of the areas in which the SBA should expand its role and other ideas for improving its performance.

## Speakers on Campus

In the last year, the SBA has not invited anyone to speak at the Lincoln Center campus and in fact formally closed its speaker's forum. Those who have come have done so through the independent efforts of other student organizations such as the Entertainment and Sports Law Council, the Fordham Democratic Law Students Association, and the Environmental Law Council. At other law schools, the SBAs take a more active role in arranging for campus visits by practicing lawyers and other prominent individuals.

## Social Gatherings

Perhaps TANGS are better than nothing at all, and maybe they provide an opportunity for social intercourse and relaxation. But to many students, these keg parties are of limited fulfillment; at least, the feeling is that there should be other functions. Most seniors had a good time at the recent 100 Nights Party at the Discovery in Soho, but this was a twofold rarity: an off campus event with more available than beer. Again, other law school SBAs sponsor more functions away from their campuses for student social gatherings. The SBA should also attempt to sponsor wine and cheese and cocktail parties with alumni, faculty and professionals. The Placement Office is now becoming more active in this regard, and the combined efforts of the SBA and Placement might yield more effective results.

## Academic Affairs

It is not always easy to convince any administration to adopt a particular policy or introduce a course or clinical. Yet the present administration is noted for its openness, and it has responded to various student desires in recent years. Certainly student opinion, largely through the Entertainment and Sports Law Council, led to the introduction of the course in sports law, for example. One SBA member's proposal for revising the first year curriculum is being given serious consideration by the faculty. The SBA might consider using questionnaires and surveys when there is evidence of strong student feeling on academic issues. One area law school's SBA is pushing for a committee to have professors account for grades which students feel are unfair.

## Textbook and Resume Services

The FLS student body deserves an arrangement whereby upper-classmen could sell their textbooks to the SBA for resale to other students. This would certainly be more efficient than the current poster/phone number system for used book sales, which engenders much unnecessarily wasted time and does not maximize opportunities sell and buy.

The SBA should also look into providing a resume and/or general word processing service to students. One or more professionals could be hired for this purpose. They would be paid a bulk sum by the SBA, which would raise the needed money from students wishing to utilize the program. As with all group financial arrangements, the per capita rate would be lower, and the SBA would also monitor for quality before selecting the appropriate professionals.

## Other Student Activities

The SBA provides the funding for student groups, but there has not been enough interaction between SBA members and individuals in these groups. Yes, there is some student apathy, but it is a two-way street: one of the qualities of a leader is the ability to stir up interest among others. This is something SBA members should be able, or attempt, to do. It might also be noted that there have been very few articles written for The Advocate by SBA members over the last year. Finally, the SBA should consider coordinating some volunteer legal service programs, and lead the way in seeking to find solutions to students' mounting financial aid problems.

# The Advocate

FORDHAM UNIVERSITY SCHOOL OF LAW

The Advocate is the official newspaper of Fordham Law School, published by the students of the school. The purpose of the Advocate is to report news concerning the Fordham Law School Community and developments in the legal profession, and to provide students with a medium for communication and expression of opinion.

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## Functional Improvements

The writer would like to point out his general agreement with Robert Altman's proposals to improve the SBA, which are reprinted page 5 from the last issue of The Advocate. Making the SBA smaller would probably have a beneficial effect and lead to greater accountability. It would also help to have mechanisms for better communication between students and SBA members.

Finally, while the SBA President deserves fair compensation for his or her efforts (although it should be something less than full tuition remission, as was stated last month), this individual should not be permitted to hold down a part time job while in office. At the same time, the administration should consider ways in which to heighten the role of the SBA President in certain areas of its decision making process. Perhaps the SBA President could be given membership on certain standing and ad hoc committees. The administration would be promoting better relations with the student body and giving appropriate recognition to what should be a vital position.





## CUOMO UNCOVERS SBA DIRECTORIES

After a six month investigation carried out by city and state law enforcement officials and the FBI, the FLS Student Directories were discovered at the East Side Heliport last week by none other than Governor Cuomo himself during a mid-day helicopter landing.

"I had been putting a great deal of time into the investigation," the governor said, "although I must confess I wasn't engaged in it at the particular moment. During helicopter flights to and from Albany, I usually deal with less important affairs of state. I had been spending half of my time in my downtown offices organizing and expanding my special task forces for the search."

The quest for the directories has been a matter of concern to authorities at all levels of government since an SBA member reported them missing this fall. When asked whether they had in fact not been printed, and the SBA was just faking the scene to convince people otherwise, the SBA member angrily rebuked the questioner. Well, now we know the SBA member was telling the truth.

Actually, the discovery of the directories at the East Side Heliport was something of an anticlimax. The search had initially been limited to the environs of New York City, but subsequent evidence caused it to be expanded to other areas. Among the locations given special attention were Florida, Kuwait, Antarctica, and territories occupied by the contras in Nicaragua.

The governor expressed his feeling of relief that the long investigation had finally reached a successful conclusion. When asked whether his accomplishment would aid his quest for the 1988 Democratic Presidential nomination, he replied, "What nomination?"

### DON'T JUST SIT THERE!

(Continued from page 3)

with student organizations. Well folks my response to you is to get off your butts and help the student organization of your choice. If they're not doing anything I'm sure they'll let you do something. Events at school do not occur by miracles and if you want an event or a speaker you have to ask and help.

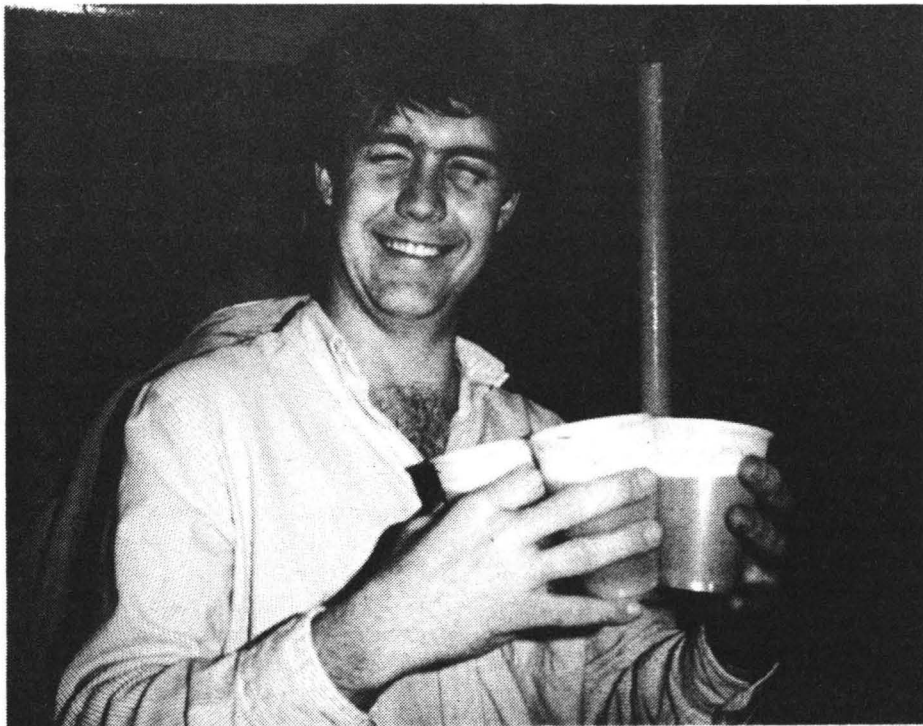
A final reason I feel student organizations are lacking this year is fear by potential members. Fear of committing their time. Fear that if they commit time their grades will suffer. I once had this fear, and there's no reality to it. In fact, each semester I have stretched myself a little thinner. Have my grades suffered? No, they went up instead. I won't list everything I do outside of school, but it suffices to say it's enough to keep me busy. Am I Superman? I really doubt it. School is important, but if law becomes your all consuming passion then you become John Doe, Lawyer, instead of John Doe, human being.

So my challenge to the student body is quite simple. Get over your fear and get involved. Contact the head of the student organization of your choice (if you don't know how ask Dean Young to give you their phone number) and say I want to help. Don't complain - DO SOMETHING!!!!

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The Boat Ride: One of the SBA's Successful Events.

## An Outline For Change

BY N.J. FENGOS

Springtime at Fordham Law School brings with it many interesting events. Among the annual events is the Student Bar Association election. To say that the SBA is a controversial organ at Fordham Law School is to make an understatement. The truth is Student Government is always controversial.

Complaints concerning the SBA are widespread and varied. The SBA officers have been called apathetic and uninterested. It is felt that the SBA has operated with a "business as usual" attitude and that there is not much that can be done. The SBA for many years has suffered from a lack of leadership. No matter how hard successive SBA administrations have tried they have not been able to create positive, constructive positions of responsibility which the rest of the Law School community can look up to with pride.

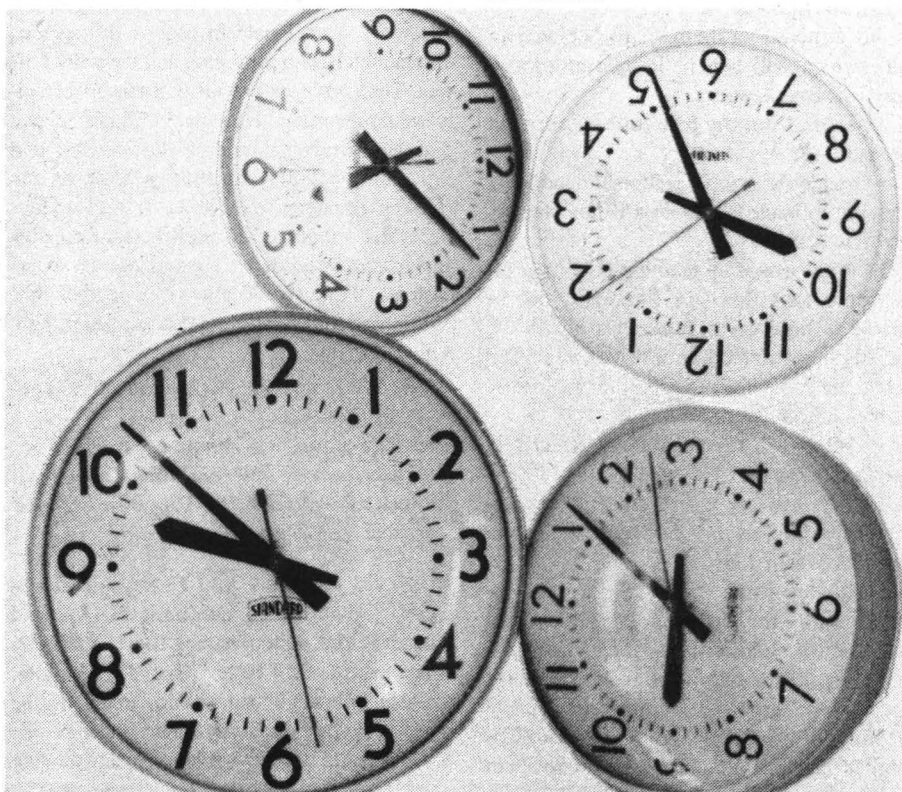
How can students at FLS expect to have their critiques of an FLS education taken seriously by the Administration if they cannot even operate a responsible student government? I will not expect the FLS Administration to take seriously a student body that cannot speak to it with a forceful, united voice which is self-supportive to a certain degree. We must exercise our talents, not merely claim to have them.

This year we have an interesting field of candidates. None has really told the FLS community what he would do to improve the SBA at Fordham. It should be noted that no candidate has made an initiative to distinguish himself from the pack. Allow me to make a few suggestions which the candidates are free to adopt:

- Establish a Housing Clearinghouse for students who need roommates and for students who need housing.
- Establish a Course Evaluation Guide. This can be done inexpensively on newsprint.
- Establish a network of FLS students who can go to their respective colleges and recruit with the admissions office for higher quality applicants.
- Establish a Used Book Exchange.
- Have a Holiday Raffle to raise money.
- Establish a closer, working relationship with The Advocate, The FLS newspaper.
- The SBA should sponsor a debate among FLS Presidential candidates.
- Have a Springtime Boat Ride to raise money. People would go at twenty dollars a person.

These suggestions by no means exhaust the possibilities which the SBA can explore. They are only meant to add to the continuing discourse concerning the future evolution of Student Government at Fordham Law School. Our SBA elections should be more than popularity contests. They should be exercises in our ability to choose leadership which will improve FLS not simply permit things to remain in a perennial mediocrity.

Those who want to participate in Student Government have a serious task in front of them. I hope they have not stepped forward prematurely. It behooves everyone at Fordham Law School to take the SBA seriously because along with a strong SBA there comes a strong Law School.



## TEN WAYS TO IMPROVE

### THE S.B.A.

(Reprinted from last month)

BY ROBERT ALTMAN

Because of the upcoming S.B.A. election, I decided to write a column on ideas which I've always thought the S.B.A. should adopt. Most of the ideas simply concern themselves with little logistical problems, however, I feel these logistical problems sometimes prevent the S.B.A. from being truly effective. Only one idea presents any difficulty in implementation (the first); the rest can all be done at the next S.B.A. meeting. Anyway here are ten ways to improve the S.B.A.:

**1. Make the S.B.A. smaller.** I'd rather have fourteen S.B.A. people who were committed primarily to the S.B.A., rather than an S.B.A. where some are on a journal or some other student activity. If only one student were elected from each section, as well as the executive team of four elected by the entire student body, we'd have an S.B.A. that would be smaller and more accountable. Presently, with three reps per section and thirty-four S.B.A. members there is the potential for a lot of deadwood. With fourteen S.B.A. members any deadwood had better resign.

**2. Pick a uniform day and time for S.B.A. meetings before anyone runs for office.** With this no one can claim they have a class or a conflict, because they should schedule their other activities around that meeting. This leads into the third change...

**3. Mandatory Attendance.** Miss 2 S.B.A. meetings and you're bye-bye. The person who finished behind you takes your place. Hey, the S.B.A. is student representation, not an optional party; attendance is the most basic part of representation.

**4. Post S.B.A. meeting attendance with the minutes - and make sure the minutes are posted:** Another step towards accountability.

**5. Print the minutes in The Advocate.** All of them? Yes! Seeing all the minutes within the last month or so gives the student body a chance to see the progress the S.B.A. has made over that time.

**6. Post the agenda for S.B.A. meetings before hand so...**

**7. Students can attend an open meeting of the S.B.A. and voice their opinion.** Fifteen minutes before the reps take over should be sufficient time to allow non-elected students to have their opinion heard. With the new wing addition finding a room shouldn't be difficult either.

**8. A student rep hour.** Student reps should submit three one-hour time slots for the school week in which they will be in the Student Activities Office to field questions. The section the student represents should then choose one of the three - this method combines convenience for the student rep and for the section. This also allows students who can't attend the S.B.A. meeting let their opinion be heard.

**9. Make a definite time when the officers change.** I talked with some S.B.A. officials last year who didn't know if their term started after elections, after graduation or in August. This leads to great accountability from April to August.

**10. Officials from the S.B.A. should liberally submit to The Advocate.** Students see campaign nonsense in The Advocate during elections and then nothing else. Hey folks, unless you write something defamatory The Advocate will put it in! Let us know how you feel on an issue. If there's a proposal for a curriculum change which is close to passing, tell us. There are a whole bunch of people who don't really know you - and they want to know you. Here's your chance to tell the school what you do.

None of these ideas present any problems to the truly dedicated S.B.A. official and thus present no problem to any present S.B.A. official. A little more effort along the lines suggested should go a long way. How about it folks?



# The SBA Presidential Candidates Answer The Advocate

## Dave Motola

### 1. What should be the SBA's role at Fordham Law School?

The S.B.A. is an organization which represents the interests of all the students enrolled at Fordham Law School. Primarily the S.B.A. performs a very important social function, planning and organizing various events which allow the students (and faculty) to take a much needed break from the heavy and rigorous academic courseload. However, the S.B.A. also takes an active role in the educational process at Fordham, including participating in student-faculty meetings, providing copies of exams in all required courses, and running Orientation for incoming students. These social and educational functions (as well as others not listed) play a tremendous part in maintaining a high standard of student life here at Fordham. I believe that there can be a greater and more efficient utilization of the S.B.A.'s resources next year than the manner in which the S.B.A. has been run in the past.

### 2. Aside from the free tuition, why are you running?

I feel that I possess the necessary characteristics and experience (as the present Vice-President of section 2B) to provide the type of leadership for the S.B.A. that will make it a more important and integral part of student life at Fordham. I realize that there are long hours and numerous problems to be dealt with as President of the S.B.A., but I also think that there can be much satisfaction derived from doing the job right. I look forward to the challenge and believe that I can make effective and needed changes that will prove to be a benefit to the school as a whole. I know that Sam Watkins, Kimberley Martin, Matthew McKinley and myself would combine to make the S.B.A., the most organized and result oriented S.B.S. yet, at least in terms of the time I've been at Fordham.

### 3. What would be your reaction to a requirement that the SBA President not be allowed to hold down a part time job?

When a person is elected President of the S.B.A. his or her primary obligation is the efficient and organized running of the S.B.A. I am not adverse to a requirement that the S.B.A. President not be allowed to hold down a part-time job.

### 4. What has the SBA done effectively over the past year?

The most successful events conducted by the S.B.A. during the first semester were Orientation and the Boat Ride. Other than these two events the S.B.A. seemed to be in a semi state of confusion (this view was shared by a number of S.B.A. representatives, myself included). However, second semester things have settled down; the S.B.A. is more organized, there have been regularly scheduled TANGS as well as important work done by the student-faculty committee. I believe that the S.B.A. has not nearly reached its potential this year, and I feel that with an organized plan from day one, next year's S.B.A. could be the best ever.

### 5. Do you think that FLS students are happy with the incumbent SBA, and whatever the opinions, are they justified?

I feel that, particularly with regards to first semester, there has been strong student dissatisfaction directed at the S.B.A. This discontent is certainly justifiable, as at times it appeared that the S.B.A. was not doing anything. There has been improvement during the second semester, but there could be more.

With regularly scheduled bi-weekly meetings, coupled with mandatory attendance on the part of the representatives, I believe that the S.B.A. can be very effective in dealing with the concerns of the students. This year there was far too much apathy on the part of a number of S.B.A. representatives, e.g. missing

meetings and not participating in the meetings they chose to attend. I feel that the students at Fordham have every right to ask the S.B.A. to make an accounting of what it has done and will do for the school.

### 6. Do you think the SBA should sponsor social functions besides TANGS and the Boat Ride?

I definitely believe that as long as it is economically feasible and the student interest is present, the S.B.A. should have as many outside social events as possible. For example, I have recently been exploring the possibility of having a Fordham Law School party at a nightclub somewhere close to school. Such outside parties would alleviate such traditional problems associated with TANGS such as ending early and running out of beer. Other outside events could include group ticket purchases to Broadway shows, events at Lincoln Center, and sporting events.

### 7. In what specific ways will you improve the SBAs relationship with the administration?

This question presupposes a strained relationship between the S.B.A. and the administration. I do not believe there are any major problems with the relationship between the S.B.A. and the administration. I feel that as long as both groups remain cognizant of and respect each other's point of view there can be effective and open communication and cooperation on the part of each.

### 8. What other new ideas would you put into effect?

Besides my previously stated ideas concerning the actual running of the S.B.A. and outside events, my basic concerns involve the everyday problems at Fordham which trouble us all. I would implement a plan whereby the copy and change machines in the library would be adequately maintained. I would organize an empty aluminum can collection system so the money from those cans could be put back into the S.B.A.'s coffers. I would attempt to have all the school's clocks properly set to help us all get to where we want to go on time. These are just some of the Basic things which can be readily solved with the proper effort.

### 9. When will the student directory be published?

The student directory should, no doubt, be published as early as possible first semester.

## Stephen Mitchell

### 1. What should be the SBA's role at Fordham Law School?

The SBA should be the impetus behind programs which will benefit its constituents as students and as lawyers.

### 2. Aside from the free tuition, why are you running?

I can provide the type of leadership and ideas necessary to make Fordham a better place to go to law school.

### 3. What would be your reaction to a requirement that the SBA President not be allowed to hold down a part time job?

Fine. My plans for the SBA involve a lot of hard work. It would be difficult at best for me to have a part-time job.

### 4. What has the SBA done effectively over the past year?

The SBA effectively voiced student concerns about the writing requirements needed to complete a Fordham J.D.

### 5. Do you think that FLS students are happy with the incumbent SBA, and whatever the opinions, are they justified?

No, most students do not believe the SBA can improve their legal careers. I disagree and under my administration the SBA will new ideas designed specifically to enhance the careers of Fordham law graduates.

### 6. Do you think the SBA should sponsor social functions besides TANGS and the Boat Ride?

Yes, the SBA should, in conjunction with the Career Planning and Alumni offices, sponsor after work cocktail hours and invite Alumni so that students can network.

### 7. In what specific ways will you improve the SBAs relationship with the administration?

The SBA has a good relationship with the administration. I plan to challenge the administration to support some of my new ideas.

### What other new ideas would you put into effect?

My platform states, within 250 words, most of my ideas. One idea I omitted: to set up a fund garnered from those 3rd year law students who were successful in finding summer jobs to provide an income for students with financial need who elect to work at non-paying summer internships. It may be possible to develop a fund of \$30,000.00. This type of program is very successful at other law schools.

### 9. When will the student directory be published?

October 1.

## Robert Reidy

### 1. What should be the SBA's role at Fordham Law School?

The SBA should serve as both aggressive student protector and inventive social coordinator. It is the responsibility of the SBA to be sensitive to the needs of the students. Many students seek the addition of the Yom Kippur holiday to our fall calendar. The SBA should address and attempt to satisfy this desire. Further, the SBA should try to expand the scope of the available student activities. Why not start with the inception of discounted trips to Lincoln Center performances?

### 2. Aside from the free tuition, why are you running?

Because I have watched my own section representatives (Dave Motola and Sam Watkins) sit silently by while I and my fellow students needed help. This spring many of my classmates were upset by a midsemester class schedule change. On this occasion neither Sam nor Dave did anything. I believe that their lethargy has proved them unfit to serve. I want, basically, to be in a position to protect the student's interests because we can no longer rely on the current personnel.

### 3. What would be your reaction to a requirement that the SBA President not be allowed to hold down a part time job?

I believe that the SBA President should be allowed to participate in one of the various clinical internship programs that the school offers. To deprive the President of this opportunity would be unfair. However, I do not believe that the President should be allowed to hold a part time job simply for money. If he or she should need money, they may obtain a loan like any of the rest of us. The point is that their free time outside of academic pursuits belongs to the students. They should always remember that they have a full time obligation to serve their fellow students.

### 4. What has the SBA done effectively over the past year?

Very little of practical importance has been accomplished. They only ran three Tangs (two of which ran short of beer). They have not even been able to publish a student directory.

### 5. Do you think that FLS students are happy with the incumbent SBA, and whatever the opinions, are they justified?

No, they are not. I believe that Dave Motola, Anthony Laura and Sam Watkins are among the responsible parties. In my classes these people sat by and did nothing while important student interests were compromised. For example, this

spring 2B's class schedule was changed in midsemester. This caused great student inconvenience. Dave, Anthony and Sam, our own classmates, stood by and did nothing. Their conduct was reprehensible.

### 6. Do you think the SBA should sponsor social functions besides TANGS and the Boat Ride?

Yes, why not run discounted trips to Broadway shows or Lincoln Center performances? A spring boatride may also be a good idea.

### 7. In what specific ways will you improve the SBAs relationship with the administration?

If we can improve the credibility of the SBA as the active advocate of the students, then we will be more effective as their representative. I believe we are blessed here at Fordham with a cooperative and caring administration. If we can just inject some vitality into the SBA. I believe we will function well with the present administration.

### 8. What other new ideas would you put into effect?

I believe that many new policies could improve the SBA. For example, if a section rep misses more than two meetings per semester, they should be dismissed. The minutes of each SBA meeting should be published in the Advocate. Cans and bottles should be collected and redeemed for deposit to generate a new source of SBA funds. Discounted trips to Lincoln Center or Broadway should be started. All these things are possible and will occur if I am elected.

### 9. When will the student directory be published?

This is the most deplorable example of the present incompetence of the current SBA leadership.

## Anthony Laura

### 1. What should be the SBA's role at Fordham Law School?

It should be made clear here that the SBA is comprised of all students who have paid their SBA dues. Thus it is primarily a community of students striving to make Fordham Law School more than just a legal education. This takes the form of earnest input into faculty & administrative matters, the promotion and funding of student organizations and activities, and the improvement of the law school social life through Tangs & other special events outside the law school (e.g. Lincoln Center programs). It also serves as the main vehicle for addressing and remedying all student-oriented problems that may arise during the year, and attempts to prevent problems before they arise through 1st year orientation.

### 2. Aside from the free tuition, why are you running?

At the time of submission to the Advocate, the Administration has not determined whether next year's President will receive a tuition remission, thus playing a small role in my decision to run. I believe that my Fordham experience should go beyond legal training. My involvement in the SBA has and will be a large part of my Fordham experience. Fordham Law is on the upswing, and the next President will play a major role in its continued success. I feel well qualified to take that leadership role, and attempt to make not only my experience at Fordham more meaningful but all others at well.

### 3. What would be your reaction to a requirement that the SBA President not be allowed to hold down a part time job?

Personally, I have no intention to hold down a part-time job next year. Should the SBA Presidency be a paid position next year, it is obvious that a high duty is owed to serve fully and completely as President. Full tuition makes it a full-time job, and it should be treated as such.

(Continued on page 9)



## CAREER PLANNING TIDBITS

(Continued from page 1)

Nearly 50 Fordham students attended the very successful **Public Interest/Public Service Symposium** at NYU last week on Feb. 14 & 15.

198 subscribers to the **National Apartment Exchange** have realized what a great service this is to thousands of students across the country-stop in to review this document if you're looking for temporary housing this summer or interested in subletting your place! (See Bonnie Hurry!)

Did you know that there aren't enough Fordham evening students to go around? True: there are more **jobs for evening students** in our job books than there are students to fill them! If you're thinking of making a change, please consult our "Full Time" Job Book for details!

Ten students are interested in pursuing **employment in Washington, D.C.** The Career Planning Center is developing several initiatives to help them, including sharing a list of our 200+ alumni in WDC and a mailing of their resumes. If you are interested in WDC employment - see Maureen Provost or Bonnie Hurry immediately.

### PROGRAMS BEING PLANNED:

- Judicial Clerkship Application Process Information Session & meetings with Faculty committee, Wednesday, March 27, 5:00 p.m., Room 303
- "How to Succeed in Your Summer/First Job" panel/workshop
- "Dress for Success/The Lawyers' Image" workshop
- Two separate career panels, one on Family Law and the other on International Law (including representatives from admiralty, immigration, intl. trade, tax and additional areas of intl. practice)

You'll hearing very shortly about your assignment for the **ALUMNI ADVISOR** program. You will receive a letter in the mail with a packet giving details on establishing your relationship with your advisor. Many alumni in various specialties have indicated an interest in having students "shadow" them during a day or half day of practice. If you are interested in this program, speak to Carol Vecchio about the **STUDENT OBSERVER PROGRAM**.

Thusfar, 33 alumni have offered to host students wishing to "shadow" them through the **Student Observer Program**. They include:

Thusfar, 33 alumni have offered to host students wishing to "shadow" them through the **Student Observer Program**. They include:



### Keep Those Atrium Cocktail Parties Coming.

- 2 alumni in corporations, practicing labor and commodities
- 2 alumni in District Attorney's offices, doing state criminal law, trial advocacy
- 29 alumni in law firms, practicing: admiralty, administrative, antitrust, appellate, banking, corporate, commercial, civil & criminal litigation, construction, copyright, contracts, energy, environmental, estates, general practice, health, industrial development bonds, labor, leveraged leasing, litigations, maritime, matrimonial, medical malpractice, negligence, nonprofit, patent, public finance, public utility, product liability, personal injury, real estate, securities, secured transactions, tax trademark, trusts & estates, unsecured lending, and zoning law.

**Spring On Campus Interviews** are being arranged on a daily basis. Thusfar, the following employers are visiting - an additional 10 or so are "pending."

- 2/28 Army JAG Corps '85 (Info session for '86 + '87)
- also: Coopers & Lybrand cocktail reception
- 3/1 Stroock & Stroock & Lavan '87
- 3/28 McGeorge School of Law '85 + others.

Keep checking your mailboxes for notes & info!

Next Student Advisory Committee (SAC) Meeting will be held on Monday, March 4, 1985 at 1:00 p.m.

Tuesday, April 9 5:30 - 7:30 p.m. The New York office of Morgan Lewis & Bockius will host a wine & cheese reception for 1987 J.D. candidates at their offices at 101 Park Avenue (45th Floor, btwn. 40th - 41st.). Individual invitations will follow.

# Towards A New Justice: Helping People Help Themselves— A Domestic Program

BY ROBERT ALTMAN

As mentioned in the first article of the series this second piece is devoted to the domestic side of a "New Justice" program. The purpose of this program is to help people help themselves. To do this I propose ideas on four fronts: education and affirmative action, urban renewal, crime and worker involvement. First, I will deal with education and affirmative action.

### EDUCATION and AFFIRMATIVE ACTION:

I was going to explain my ideas by writing "A TALE OF TWO HIGH SCHOOLS." The two high schools are Great Neck South and any typical inner-city public high school. Both public schools, but miles apart in the quality of education. However, to make a long tale short, let me just say that the amount of money spent per pupil in Great Neck is substantially more than the money spent per pupil in New York City. Here's why. Public schools are funded partially through the state, but mostly through local property taxes. Since the tax base in suburban towns like Great Neck can afford more money spent per pupil than New York City, Great Neck goes ahead and spends more. State aid doesn't make up the difference between the two systems and in some cases may exacerbate the problem. The result is unbelievably disproportionate amounts of money spent on the pupil in Great Neck versus the pupil in the inner-city. Since education is a state responsibility and unequal amounts are being spent on pupils (leading to an unequal education) we would seem to have a violation of the equal protection clause here. Not according to the Supreme Court. In *San Antonio v. Rodriguez* (1973), the Court's worst decision since *Plessy v. Ferguson* (1896), the Court by Justice Powell ruled as Constitutional this inequality.

The Court blew it and there are so many reasons why. First, it felt that if a correction was to be made the State Legislatures could make it. With such brilliant logic, I will never accuse Justice Powell of having any political knowledge, ability or anything else political. Such a statement is politically naive to the point of childishness. Since suburbs dominate the legislatures, what self-respecting, suburban politician would vote to equalize education funding? None. Why? Because only two methods really provide a solution - raising taxes or

depriving the suburban schools of much of the state funding they receive. No one wants to raise taxes, and if it's done, no one wants to raise them to help someone else without getting their own piece of the pie. As for depriving local suburban school boards of state aid - well Governor Cuomo tried this "Robin Hood" program when he should have had the most success - right after his inauguration. Result - failure. Why? A school teacher from Long Island presented the prevailing view point - "We're not saying don't increase aid to the cities' schools - just don't cut ours." Not a feasible way to reach equality without a huge tax increase. What finally happened? Money for both suburban and city schools was raised slightly, but the wide disparity remains.

The Supreme Court also ignored (Justice Marshall in a surprisingly logical dissent did not) the effect education has on our entire society. Recent studies show what common sense has known for ages. The way out of poverty is through education. However, can we expect our inner-city youth to climb out of their impoverished status without a decent education, at least as decent as their suburban counter-parts? Inequality in education is unjust. Not only is it unjust within its own mechanism, but by its own injustice it creates an injustice which permeates throughout our entire system. I don't think I'm being farfetched if I say that going to school at Great Neck South is a hell of a lot nicer than attending Jamaica High School. Money can't buy pride, but it can help to give students a high school of which to be proud. Additionally, even if an inner-city youth graduates high school what are his chances of attending college - let alone an Ivy League school or a school of the stature of Fordham? Finally, upon entering the job market who has the better chance of landing a job?

A final point the Court failed to address in *San Antonio* was the economics of cities. If they taxed their citizens much more they would lose business to the suburbs at even a more alarming rate. City tax bases are fragile enough without facing further erosion through the loss of business to the suburbs. Some suburbanites might say the hell with cities, but this approach is short-sighted. Cities have existed without suburbs, but the reverse has never been true.

(Continued on page 14)

## FLS RECEIVES AWARD FOR ELEVATOR SERVICE

Fordham Law School has received a special award from the New York City Buildings Department, in recognition of its unique innovations in elevator service.

A spokesman for the department cited the speed and efficiency of the faculty elevator upon making the announcement. When a student remarked that the elevator wasn't so efficient, in that it let him off on the fourth floor when he had pressed the "three" button, the spokesman pointed out that the award wasn't made with that aspect of operation in mind.

"The law school was the first institution to issue stand-by tickets for elevator service. Just because students didn't respond to this idea, it doesn't mean we shouldn't recognize its originality."

When further asked whether the law school deserves any sort of award in light of the dubious operation record of the lobby elevator this year, the spokesman replied, "Well, nobody's perfect."





# The EEC Today: Its Practical Importance For The American Lawyer...

BY PROFESSOR ROGER GOEBEL

As Fordham creates its Center for European Community Law and International Antitrust, the question may well arise: Why is the EEC today of such importance for the American lawyer (or, more specifically, for the lawyer who specializes in international business practice)?

Readers of the news media are perfectly well aware that the EEC or European Common Market is currently going through a period of political crises and internal controversy. The Common Market confronts serious problems in dealing with constantly increasing agricultural surpluses and the related financial burden of subsidizing farmers, in attempting to rationalize and modernize its industry to meet world competition, and in dealing with the application of Spain and Portugal to become member states, an application which has been pending since 1979. The EEC's inability to resolve these issues has given rise to sharp criticism in the European press, with consequent echos in American publications. A casual observer may well wonder whether the institutional structure and regulatory system of the EEC is all that important for American lawyers today.

American businessmen who trade with the EEC, however, have quite a different impression of what is going on in Europe. The EEC remains in the aggregate the largest trading partner of the United States, and over the years American multinational companies have created an ever-increasing number of subsidiaries engaged in manufacture and marketing within the Common Market. Indeed, it is sometimes said that it is the American multinationals that have most benefited from the European Common Market, even more than their large European competitors.

In the generation that has elapsed since the Common Market was established by the Treaty of Rome of March 25, 1957, the six original member states, together with the four subsequent adherents (including the U.K.) have formed a single market area. Although there are still many technical hindrances to the free flow of goods, capital, and workers, no objective observer can doubt the major success of the EEC in the creation of an overall economic market largely open to competition on a European scale.

The EEC Commission, which is essentially the center of the administrative bureaucracy, and the EEC Council, which represents the member states, have together produced a massive body of regulation which harmonizes and controls the economic life of the Common Market to a striking degree. The Court of Justice not only interprets the law, and hears appeals from administrative decisions of the Commission, but also has developed a case law doctrine of the supremacy of the EEC Treaty and regulations over national law which is in many ways reminiscent of nineteenth century U.S. Supreme Court decisions interpreting the Commerce Clause.

For the international business lawyer the two principal areas of legal interest are the current evolution of the EEC antitrust law and EEC trade law. However, there are a number of other sectors of legal concern which are less well known, but which have the greatest practical importance for American business interests, and consequently for American lawyers serving to support the businessmen in understanding how to deal successfully in the foreign environment of the EEC.

## Antitrust Law

We are well aware that there are winds of change in the American antitrust scene today. There are likewise winds of change in EEC antitrust law, but what is interesting on a comparative basis is that they seem to be blowing in the opposite direction. Although antitrust law in the Common Market has historically developed in many respects in a more pragmatic and flexible mode than the comparable rules in

the United States, in recent years EEC antitrust has continued along a course of more strict regulation of certain economic sectors, while American theory and, to some degree, practice has reduced the level of regulation.

For several years the Common Market Commission has been attempting to develop regulations which will serve as guidelines in important legal categories of business operations, indicating the distinction between types of conduct which are illegal, those which are legal, and certain which fall in the gray area in between. In 1984, this gave rise to four important new regulations: those on exclusive distribution agreements, exclusive purchasing agreements, patent licensing agreements, and research and development joint venture agreements.

These new regulations are all certainly welcome in providing a better structural coverage of rules that were formerly largely set forth in ad hoc case law, but the problem for the American businessman and lawyer is that the regulations themselves are not all that easy to read and understand. Both in concept and approach, they are based upon prior decisional law which is not at all the same as that developed in the United States. It will take some time before the application of these regulations becomes relatively well-known in practice.

Moreover, there are categories of legal arrangements, some of them closely related to the new regulations, which are not covered at all, and their fate remains very much in the gray area. One obvious example is the field of know-how licensing which is today perhaps as important in commercial practice as patent licensing, but which has not been covered as such under the new patent licensing agreement regulation. Another example is franchising, which to date has not been the subject of any case law or regulatory coverage, despite its rapid growth on the European market scene.

There are other areas of EEC antitrust law which are in a process of fermentation and evolution, and which are giving rise to many new case law precedents. Many of the rules involved are again either unknown or not so easy to understand for the American lawyer, trained in American antitrust concepts. For example, there is a sector known as selective distribution, which embodies a variety of rules governing a particular type of distribution quite common in western Europe. The case law in this area, developed largely through Commission decisions and a few opinions of the Court of Justice, has been evolving for several years and is only now coming into concrete form. Most American lawyers are still not quite sure exactly how to comply with the rules.

Of particular importance, in connection with vertical distribution, is the increasingly strict attitude of the Commission in enforcing the EEC Treaty's prohibition against resale price maintenance. In recent precedents, such as the AEG-Telefunken decision, the Commission has indicated (and its policy view has been affirmed by the Court of Justice) that it will find that even an attempt to "influence" retail price levels will be a violation of EEC law, and subject to severe fines. This seems rather ironic in view of the recent questioning in the U.S. of the desirability of flat prohibitions of retail price maintenance in vertical distribution.

Another case of considerable importance to American practitioners is the recent Woodpulp decision, handed down by the Commission in December, 1984. The defendants were the principal producers of woodpulp in the United States, Canada and Scandinavia, and they were subject to substantial fines for their conduct, principally because of alleged price-fixing. The decision is important not only because it represents an expansion of alleged cartel behavior well beyond traditional modalities, but also because the Commission very clearly adopted the controversial "effects" theory in its assertion of jurisdiction over non-EEC defendants. Moreover, many of the

American defendants belonged to a Webb-Pomerene Act Export Trade Association, and language in the decision gives rise to serious concern as to the antitrust risks which export trade associations under the new 1982 Act would run in export trade conduct which is permitted by U.S. law but forbidden under EEC law.

These and many other recent developments in EEC case law, as well as the new regulations, suggest quite clearly the need for increased study and understanding by international lawyers of the EEC antitrust law. American lawyers should be particularly careful not to assume that EEC rules parallel U.S. antitrust theory. The two antitrust systems are definitely diverging more and more, and, given the substantial impact of the EEC regulatory system (not to mention the increasingly heavy fine levels), American lawyers must give even greater attention to the EEC rules in order to be able to properly counsel clients with substantial commercial interests in the EEC.

## Foreign Trade Law

Even a casual reading of the headlines in current newspaper articles indicates that the United States and the EEC are increasingly engaged in confrontation on the front of international trade. Although the U.S. undoubtedly has more severe problems in an international trade context in its relations with Japan, it is nonetheless true that the Common Market as a whole remains the largest single trading partner of the U.S. and the EEC is quite substantial. The resolution of many of these issues must ultimately be left to diplomatic levels, but the American businessman, and the American lawyer experienced in international practice, is certainly obliged to understand and attempt to abide by the EEC rules in the trade area.

Since the successful conclusion of the GATT Tokyo Round negotiations in 1979, the EEC anti-dumping regulation and the U.S. anti-dumping rules were modified to resemble one another more closely. Although that facilitates the ability of the American trade lawyer to understand and defend the interests of his client in anti-dumping proceedings in the EEC, nonetheless there are many differences in specific practice areas that do warrant serious attention. Moreover, in the last three years exporters from the United States have been involved in more anti-dumping proceedings in the Common Market than have been exporters from any other single country (including Japan).

American businessmen are usually dismayed when they become involved in an anti-dumping proceeding in the EEC, both because the amount of economic and legal material that has to be gathered to defend such a proceeding is so substantial and must be obtained in such a short period of time, and because the effects of a large anti-dumping duty can be so severe in impact. Indeed, in some cases the new duty is so substantial as to virtually exclude the American exporter from further ability to compete on the market. It must also be emphasized that the EEC Commission's review of the economic factors which are examined to determine whether the exporter has engaged in dumping is a review which totally ignores good intentions and plausible excuses for the behavior. American exporters are increasingly found to be "dumping" because the value of the dollar is rapidly rising vis-a-vis major European currencies, and the consequent customary local currency sales price used by the U.S. exporter in selling in Europe, to meet competition there, may well fall below his sales price on the U.S. market, which remains stated in dollars.

It requires considerable skill for the American lawyer both to understand the complex EEC anti-dumping regulations as applied in practice, and also to comprehend and intelligently work with the economic data which is the critical factor in an anti-dumping proceeding. Further, Common Market regulations

in the anti-dumping area have one substantial difference (and defect) in the eyes of American lawyers, and that is the virtual inability to secure judicial review of a decision which has found dumping to exist and imposed a duty. The structure of the anti-dumping system in the Common Market is one in which the decision is taken as a Council regulation adopted as a legislative measure, and the Court of Justice has no jurisdiction to review legislative as opposed to administrative measures.

But apart from anti-dumping as such, there are other areas of EEC trade law which are of growing importance to the international business, and of obvious technical difficulty. These include the many regulations in the customs area, such as the 1980 regulation on the valuation of goods, related regulations on the determination of national origin of goods and on the partial processing of goods within the EEC, and the arcane system of classification of products in one tariff category of another. There is a growing body of EEC case law in these areas as well, but this is a field relatively unknown to American lawyers.

It is obvious that American lawyers cannot become experts on EEC customs law — even within the EEC, national lawyers who develop such expertise tend to be specialists. But it is possible and desirable to obtain a sufficient awareness of the general principles to assist American management to understand the dimensions of the problems, and to help structure, for example, the patterns of U.S. parent-EEC subsidiary sales and pricing to conform with the EEC trade rules.

## Intra-EEC Trade Law

An American multinational corporation with a manufacturing subsidiary in the EEC, or one which markets extensively from one country into another country in the EEC, has long learned to appreciate the principle of free movement of goods that has been created by the Common Market as a customs union. Unfortunately, however, the principle of free movement of goods can be partly negated in practice by national technical measures intended to protect public policy, health, safety and morality as permitted under Article 36 of the EEC Treaty. Although many basic consumer products do indeed flow easily from one country to another, other goods, especially those of greater technical sophistication, may well be impeded by the national limitations.

Since the end of the 1960s, the Common Market has well been aware of the problem posed by such so-called technical barriers to trade, and has been attempting in many areas to eliminate them by regulations intended to harmonize national health, safety and technical performance standards. In addition, some national regulations which cannot be justified as truly necessary to protect legitimate national interests have been successfully attacked by the Commission or private parties in proceedings before the Court of Justice. Thus, national regulations which forbid the sale of liquor with certain alcohol content or which is not made with specified ingredients can be struck down if the protection of health does not substantially require these measures (the currently pending German beer case is a good example). Likewise, regulations which require products to have an indication of origin when the origin is irrelevant to the product's characteristics are also forbidden. (An amusing example is the Irish Souvenir case, in which Irish regulations which required souvenirs with shamrocks or typical scenes to be made in Ireland or stamped as "foreign" made, were struck down.)

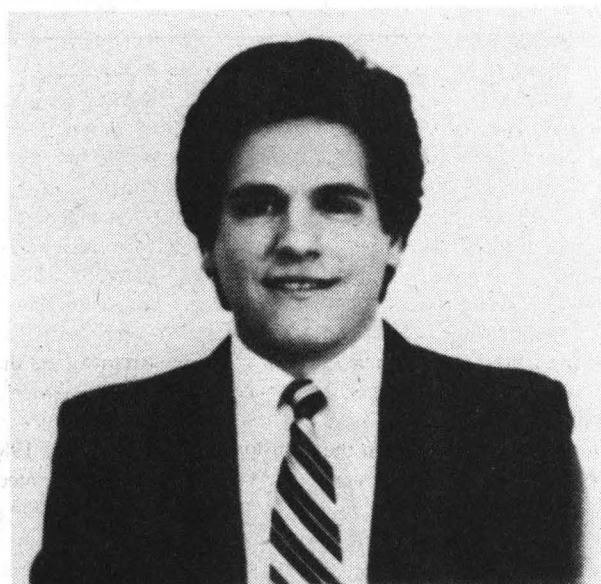
There is accordingly a rich field of study for the American lawyer in attempting to determine the extent to which a client can benefit by the harmonization provisions of one EEC regulation or another, or can successfully attack a national barrier to trade which is based on technical or safety standards which are not justified. The case law is unfortunately not

(Continued on page 9)



# SBA Election Supplement

## FORDHAM FORUM



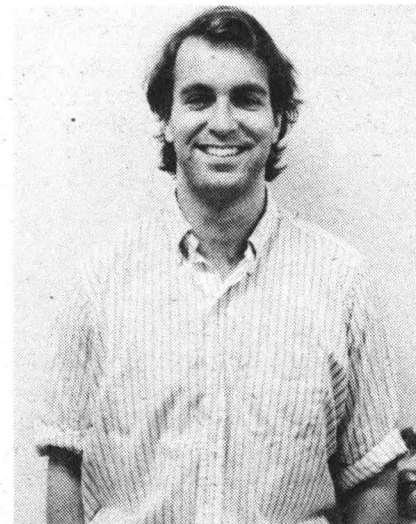
**ANTHONY LAURA -  
President**

The word that best describes this past year at Fordham is TRANSITION. The additions to the building have disrupted classes, study & the ability of students to enjoy life at the Law School. This transition period is at an end, and it is the job of the SBA to encourage and enable the Law School to live up to its newly found prestige, brilliance and responsibility both inside and outside the Fordham Community.

As SBA President, I will do my best to place the SBA where it belongs—leading a more vibrant & encouraged student body. As my record indicates, I have the ability to take that leadership role and make the SBA more effective in the eyes of the students and the administration. The Fordham Forum ticket (David Otto - Vice President, Kathy Karavellas - Treasurer, Beth Edds - Secretary) realizes that

the SBA must make our Fordham education much more than classroom instruction; it can and should be a **complete** experience, reaching beyond lecture and study.

In reaching out the SBA should reach in to its most important resource—the **students**. The SBA is not made of elected representatives. Every student who pays his dues is a member of the **Student Bar Association**. That is why we must take it upon ourselves collectively to become an integral part of the SBA and make the Fordham **experience** as meaningful as possible. I will dedicate myself, as I have as 1A President and SBA Treasurer, to tap the SBA's most important resource and to bring to us the sense of pride, accomplishment and enjoyment which we as Fordham Law Students deserve.



**DAVID OTTO -  
Vice-President**

The Vice President of the Student Bar Association is primarily responsible for the profluent operation of the Student-Faculty Committee, which can be instrumental in the distribution of satisfactions among students at every level. It is my intention, as Vice President, to eschew neutrality about ends in favor of particular goals.

Of course, it is not possible to affirm certain goals as fundamental without embracing some vision of the good life, without endorsing some ends over others. These ends, then, include increasing academic interaction between students and faculty, maximizing the advantages of attending law school in New York City, and developing a social agenda consistent with the diverse desires of the student body.

Reflecting upon my first year as a class

representative I feel a new faith must be found in the Student Bar Association. This faith begins with the claim that we are individual persons each with our own aims and interests; it then seeks a framework that will enable each student to realize his or her capacity as a member of the larger community. The Student-Faculty Committee is the vehicle with which to create this framework.

If we are partly defined by the community we inhabit, then we must also be implicated in the purposes and ends characteristic of this community. This candidacy, indeed each Fordham Forum Candidate - Anthony Laura, President; Kathy Karavellas, Treasurer; Beth Edds, Secretary - seeks to develop the discourse and activities implicit in a legal education, and give this community a more vital public life.



**KATHY KARAVELLAS -  
Treasurer**

Life at Fordham has undoubtedly had its share of ups and downs this past year as we have all had it with construction, drilling and a persistent lack of space. Now that Fordham is physically at its best, however, it is time to emerge from our ruts and enjoy, to the best of our advantage, our new facilities, as well as a bright new image within the community. My running mates—Anthony Laura, President, David Otto, Vice-President, Beth Edds, Secretary—and I, Kathy Karavellas, Treasurer, are full of enthusiasm and are decidedly dedicated to seeing Fordham attain new heights. During this, my first year, and as president of 1A, I have tried my best to tap the obvious energy of my classmates and to encourage an active student body. I firmly believe that the SBA is not just its elected officials, but rather,

it is all of us working together for a common goal. I will continue to encourage any and all forms of participation in the future.

The duties of treasurer are, of course, basic, but it takes more than accounting skills to effectively deal with people on a daily basis and to make "financial" decisions which affect all of us. This year I have been exposed to all aspects of the SBA—from monthly meetings, to Student-Faculty Committee, to organizing TANGS—and I feel I have developed a good sense of how it all works and what might need to be done differently in the future. Above all, however, my enthusiasm is ever-growing as I hope everyone's is. I encourage all of you to vote—Remember, you are the SBA and it is up to you to choose effective leadership!



Beth Edds

**BETH EDDS -  
Secretary**

Hi! I'm Beth Edds. I am 27 years old and I come from the Midwest (Indiana). After graduating from Indiana University as a Musical Theater Major, I moved to New York to pursue performing. My theatrical background taught me to communicate effectively with all types of people on many levels. For the past year I have served as president of section 2E and as a member of the Student Faculty Committee.

The SBA is an organization which, when operating effectively, should be a conduit between the students and the administration. Currently, there seems to be confusion as to what the SBA has accomplished this year. The problem is not that SBA has been inactive—as many members have worked diligently. The problem is that the process used to convey information is inadequate resulting in "communication gaps" at various stages. In addition to the traditional responsibilities of the Secretary—

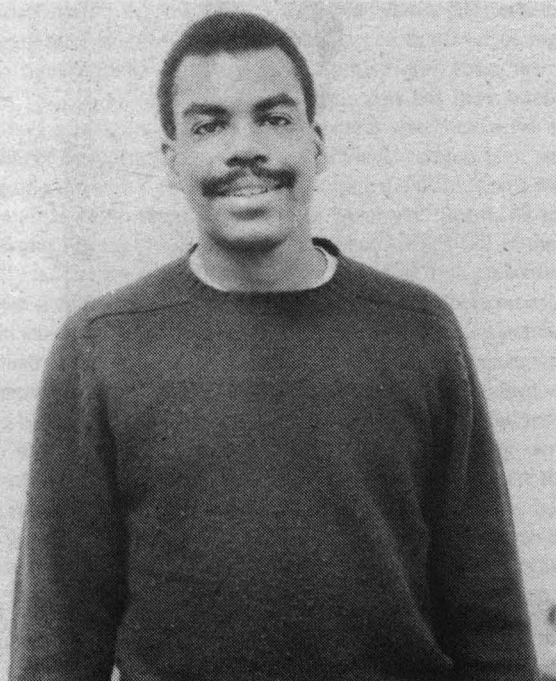
publishing a student directory and posting the minutes of the SBA meetings—the Secretary should follow up the individual reps encouraging them to discover the major concerns of their groups and voice these concerns at SBA meetings. The SBA resolutions should be reported to each class regularly either verbally or in the form of a newsletter. Instituting a schedule where SBA reps are assigned office hours, installing a student suggestion box, and utilizing the new student mail boxes are three ways to increase the opportunities for effective communication.

I share with my running mates Anthony Laura, David Otto, and Kathy Karavellas the desire to make SBA a dynamic organization. I believe effective communication is essential to accomplish that goal, and that a creative communicator in the role of Secretary is crucial. From my background and experience I believe that I am that person.



# SBA Election Supplement

## Young Barristers Party



**STEPHEN MITCHELL -  
President**

As SBA president I plan to expand Fordham's student government influence beyond the walls of the school. My goal is to enhance the reputation of Fordham Law and its graduates by making the school a well recognized center for law student participation in community political and legal affairs. One way I will accomplish this is by arranging for Fordham Law to sponsor a televised debate among the 1985 mayoral candidates. My administration will also develop a strong and well organized law student lobby force to fight the threatened federal cuts in financial aid.

There is a need to give recent law graduates greater career flexibility and increase the competitiveness for and the genuine interest in public service law. (i.e. District Attorney Of-

fice or Legal Aid) I will propose legislation in which the state would forgive each recent law graduate one year of student loan payments for every two years of public service. Although it is unlikely that this idea could be accomplished within a year with my leadership the seed can be planted.

I also propose that the requirements for selection to the Fordham Law Review be changed. In order to emphasize writing skills and open the competition to more students, the top fifty percent of the first year class should be invited to submit writing samples. Finally, many of our students drive into school and need all day parking. I plan to investigate whether or not group parking rates are available at the parking facilities adjacent to our school.

**PAT LENARD -  
Vice President**

My name is Pat Lenard and I am running for SBA Vice President. Although this position is usually held by a third year student, I feel that I am qualified to fulfill the duties of the job. Second year is the ideal time to initiate and implement new ideas and changes. Third year has its own unique pressures and responsibilities that may prove paramount to certain extracurricular commitments, namely the commitment to the Student-Faculty Committee.

My experience in leading such vital committees stems from my service at Smith College on the Student Affairs Committee which served as a communications link between the administration, faculty, and students. Discipline and mutual cooperation among us got the job done. After college, I completed the Management Training Program at the Bank of New York and worked as a money market trader. A key emphasis during the training program was leadership skills, especially in running effective, organized meetings. My later job as trader required daily presentations to Senior Management on market directives, profit/loss reports and future projections. Those meetings were an exercise in assertive organization.

I feel that I can put these skills to work for you. Our commitment to Law School is a serious one and we should understand the goals and policies of the faculty as they should be aware of and understand our concerns and needs as students.

**PEGGY O'BRIEN -  
Vice-President**

An active and vital Student Bar Association should be one of the best parts of Fordham Law School. This past year the leadership of the SBA proved only that they could be one of the most silent and inactive parts of the law school.

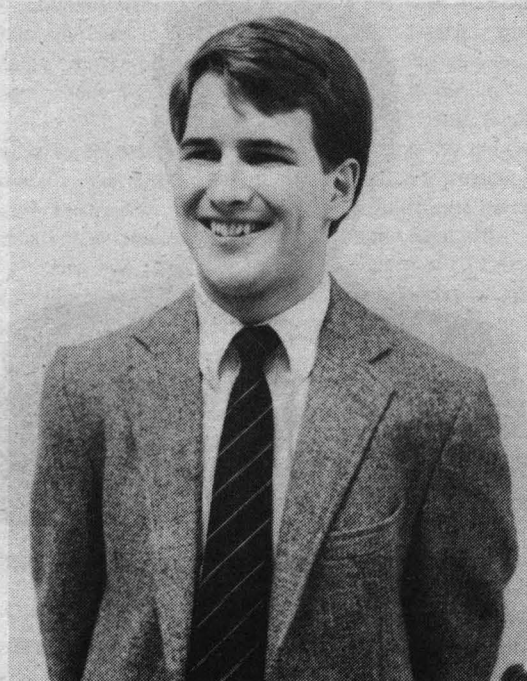
We must act together now to ensure that next year the SBA will be a useful force for the students. The simple goals of Bob, Lauren Mike and myself are to improve student life and provide the protective representation they deserve. Together, we can add Yom Kippur to our calendar, run discounted trips to Lincoln Center, and serve wine and soda at Tangs. All we need is your support to make these things possible.

**LAUREN McSPEDON -  
Treasurer**

The Student Bar Association should serve the students both as protective advocate and social coordinator. During this past year, the SBA has failed to publish a Student Directory, they have given only three Tangs (two of which ran short of beer), and have ignored growing student discontent.

I believe that Bob, Peggy, Mike and myself will bring new vitality to the SBA. We will run better Tangs, add Yom Kippur to the fall calendar, and run discounted trips to Lincoln Center. So please vote for us and we will make sure that next year is the best ever.

## Liberty Party



**ROBERT REIDY -  
President**

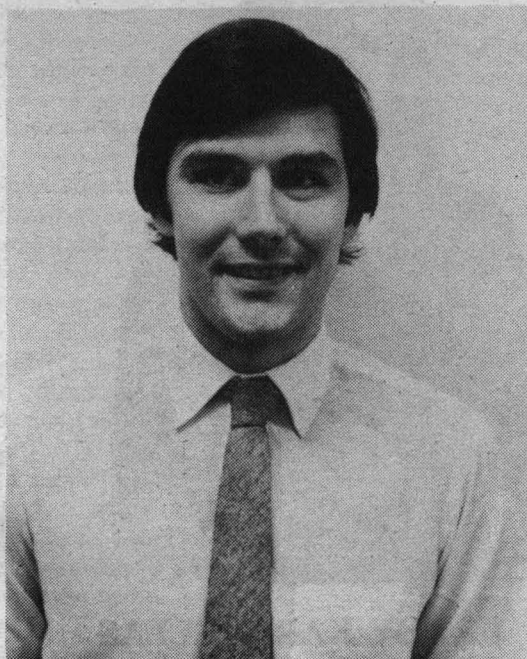
This past year the Student Bar Association earned a "do nothing" reputation among the students. I believe the ineffectual leadership is responsible. In my own class, I have seen SBA representatives stand silent while important disputes arose between the students and Biblio Juris. Later, class schedules were changed in midsemester without consulting the students. Again, the SBA did nothing.

Why has the SBA failed in so many areas? Why despite great student discontent, has nobody ever proposed the addition of the Yom Kippur holiday to our fall schedule? Why has nobody ever set up a discounted student trip to Lincoln Center? Why do cans and bottles litter our school when redemption for their deposit could supplement SBA funds? Why aren't wine

or soda served at the Tangs? Why does Tang after Tang run out of beer at 10:00 p.m.?

It will be my task as President to answer these questions. Together we can put Yom Kippur on the fall calendar, we can use the money generated by the redemption of deposit bottles to run discounted trips to Lincoln Center, and we can serve sufficient quantities of beer, wine and soda at next year's Tangs.

These are not wild or novel ideas. They are simply good ones. It is the shame of the present SBA administration that they have not yet been employed. Next year, if elected, I will do these things and I assure you the students of Fordham Law School will lack neither protective representation nor beer, wine and soda at the next Tang.



**MIKE BOLTON -  
Secretary**

Communication is the key to any organization hoping to represent students. The SBA must keep students informed about its activities and make the student government more responsive to student needs, suggestions and concerns. This is the role the secretary must play.

But there is another type of communication the SBA as a whole must concern itself with. Classes, sections and individuals are entitled to an atmosphere that fosters friendship, interdependence and a sense of who we are as a school. It would be a shame if Fordham, in becoming a "National Law School," lost its traditional strength; we are, and have been, a law school that describes the "all for oneself"

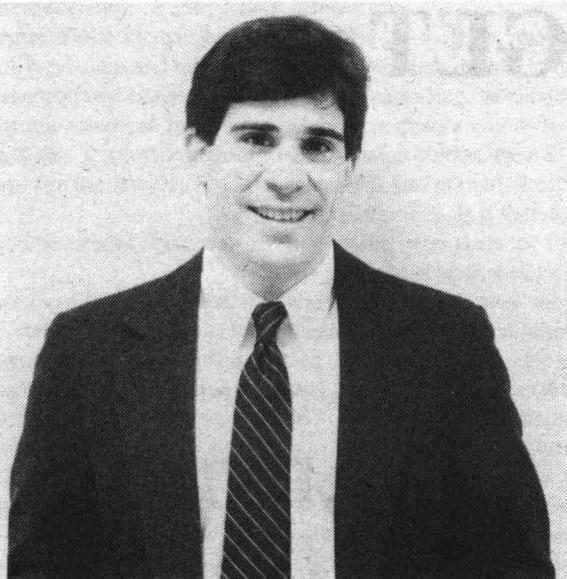
attitude present in many of our sister institutions. The SBA must enable students now, as in the past, to exist as a community rather than as isolated individuals. As a result, the emotional burdens of law school will be eased just as the tension of finding a job can be eased by keeping ties with Fordham men and women who have gone beyond the bounds of this institution.

In short, Fordham has been not only a place to get a degree but a place to form ties, grow in maturity and learn some of the lessons about becoming a lawyer not taught in the classroom. The SBA answer these needs. Once those lines of communication are opened we can be a little more proud of what we are as a law school.

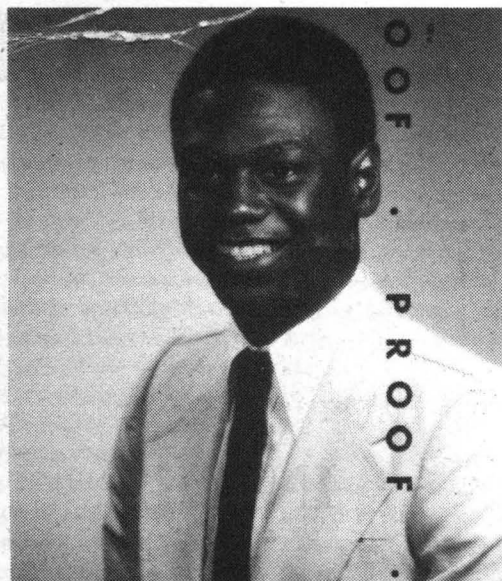


# SBA Election Supplement

## The Basics Party



**DAVE MOTOLA -**  
**President**



**SAM WATKINS -**  
**Vice-President**

I believe that as the President of the S.B.A. I would be able to enhance the social and educational atmosphere of the school in a number of ways. First and foremost there are a number of chronic problems which should be easy to solve, yet remain a constant source of aggravation. Some examples are ensuring all the clocks in school are accurate (or at least simultaneously inaccurate) and the proper maintenance of the library's copy and change machines (which are always out of order at the worst possible times).

Another important change to be made concerns the actual running of the S.B.A. I would implement rules calling for mandatory attendance of all S.B.A. representatives at all S.B.A. meetings (which would be held on a regular bi-

weekly basis). Those representatives who missed more than two meetings (Without an explanation) would be expelled and a replacement election would be held.

I also believe there should be greater interaction between the office of the S.B.A. and the general student population (in terms of the exchange of ideas and participation in activities). Such a result could be obtained through a more effective use of the Vice-President, Treasurer, and Secretary positions. Sam Watkins, Kimberley Martin and Matthew McKinley would bring the necessary dedication and ability to reach this goal.

Please feel free to talk to me if you have any questions, ideas or suggestion. GO FOR THE BASICS.

The basic premise on which our party is founded is to continue to foster the friendly atmosphere which pervades our school. Undoubtedly, it is this air of congeniality which has always distinguished Fordham Law School from other law schools. However, the cozy Fordham environment has not come about by accident, it reflects in no small way the considerable efforts of the people who comprise this community. I'd like to believe that the SBA assumes an important role in setting the tone for the school year. Indeed, the school takes its cue from the lead of its SBA representatives. As the Secretary/Treasurer of 1B and as the President of 2B, I can personally attest to the significant influence which the SBA has exerted

upon campus life. Obviously, each student bears the responsibility of shouldering his or her academic burden. Certainly, the SBA can do little to reduce the students' coursework. However, I believe that the SBA can operate to eliminate minor nuisances (such as out-of-sync clocks) while working to provide much needed outlets from the rigors of the academic grind (e.g., TANGs, the Boat Ride, intramural hoops, etc.). In closing, we cannot promise to transform our law school into Fordham Country Club. Rather David Motola, Kim Martin, Matt McKinley and I will work to insure that the Fordham Law School experience will continue to be a favorable one. Please support the BASIC party.



**KIMBERLEY MARTIN -**  
**Treasurer**

Hello, my name is Kimberley Martin and I'm running for the office of Treasurer for the Student Bar Association. I am presently the President of the first year evening school.

I have been told that the SBA has expanded greatly in the past few years and I believe with the expansion of the new wing we too can expand the student life at Fordham.

I feel that being a member of the SBA is an important position and becoming its Treasurer would be both rewarding and exciting. I have always been the type of person who likes to get involved and this year I have become involved with the concerns of both the day and evening students.

I have spoken with the Treasurers of the past two years and am fully aware of what the job entails. I see the Treasurers position as more than a check writing, book balancing position. I see it as being a responsible position needing a responsible person. I am that person.

I do not think that being a night student will detract at all from my effectiveness in the position. I am at the school often during the day and work 15 minutes away if there was ever an emergency.

I feel that in electing myself and my running mates you will be electing the best people for the positions. Thank you.



**MATT McKINLEY -**  
**Secretary**

My name is Matt McKinley and I am a candidate for Secretary of the S.B.A. I am running on the BASICS ticket with Dave Motola for President, Sam Watkins for Vice-President and Kim Martin for Treasurer. Together, we hope to make an impact on student government.

We are greatly concerned with the fact that tuition at school will probably increase \$1,000 for the next year's student. This, combined with a possible decrease in federal student loan money, poses a direct threat to our student body. Many students will have to decide if they are still able to afford law school.

What can student government do? We intend to work closely with the administration to try to find the answers to such problems as

where money can be found for those who fear they will be unable to return to Fordham. At the very least, when tuition increases \$1,000 and there is nothing to show for these additional dollars, government must make sure that students receive the BASIC services they deserve; such as, clocks working, copy machines that function a full day instead of a half a day and even that beer at TANGS does not run out before night students finish classes.

The Secretary must keep the lines of communication open between students and government. This is the only way we will know what basic services you feel are lacking. I look forward to that job and ask for your vote. VOTE FOR THE BASICS.



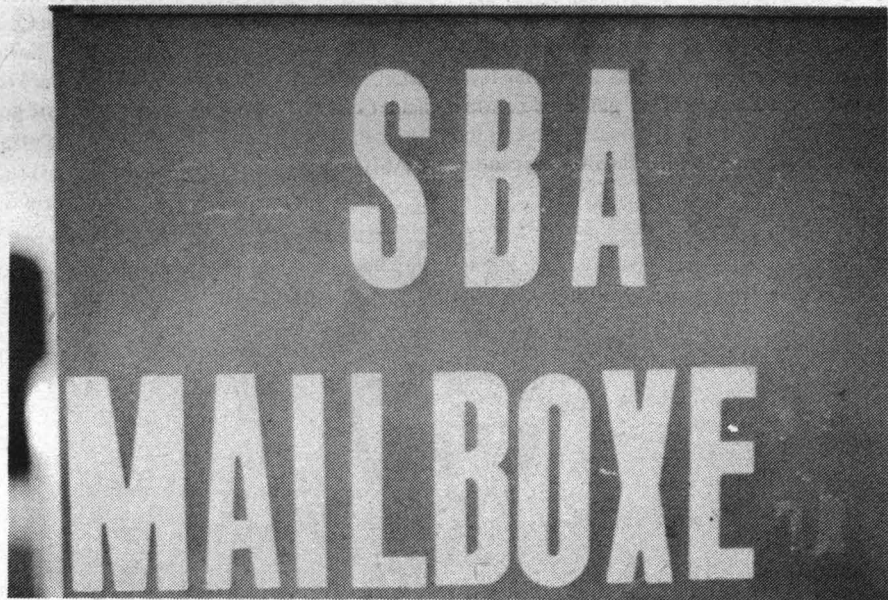
# SBA Election Supplement

**VOTE... VOTE... VOTE... VOTE... VOTE... VOTE...**

**DON'T FORGET  
TO  
VOTE**

**IN THE SBA ELECTIONS**

**TUESDAY • WEDNESDAY • THURSDAY**  
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## ...EEC Practical Importance...American Lawyer... EEC Practical Importance...American Lawyer

(Continued from page 8)

altogether consistent, can be rather abstruse and somewhat particularized, in view of peculiarities in different economic sectors. But the economic importance of understanding how to accommodate to these regulations and rules and when they can be successfully challenged is very great indeed for the American manufacturer, and accordingly this is another area of increasing importance for the lawyer.

### Consumer and Environmental Protection

Related to the sector of free movement of goods is the field of consumer protection. Initially EEC activity centered largely on the protection of consumers by the harmonization of safety standards. In the late 1960s and early 1970s the EEC adopted a number of rules on the labeling and packaging of dangerous substances, or dangerous chemical products. More recently have come a host of regulations intended to harmonize the rules in the various countries on, e.g., automobile safety features, cosmetic products, pharmaceutical goods, and safety standards for electrical appliances.

The Common Market has also moved into the related sector of environmental protection and pollution control. Regulations have been passed to fix minimum standards for job safety, maximum noise levels in certain occupations, the mode of use of dangerous pesticides, the control of sewage and other pollution in the Mediterranean, and the outlawing of PCBs and other extremely hazardous chemicals.

With the First Consumer Rights Program of 1975, the Common Market authorities entered a new sector of activity (and a somewhat surprising one, since protection of consumers is not covered anywhere in the Treaty of Rome itself). Since 1975 regulations have been passed on the labeling and presentation of foodstuffs and certain types of household consumer goods. There is work in progress for future regulations on unfair and misleading advertising, consumer credit, door-to-door sales practices, and, of par-

ticular importance, the harmonization of the widely varying national rules on product liability.

While American manufacturers are increasingly aware that the standards for the production, packaging, labeling and safety features of their products are now the same throughout the Common Market, they do not always realize that this is the result of directives issued by the EEC authorities. It is therefore another sector of growing importance for the lawyer, in order to enable the providing of accurate information and guidance to clients on the adaptation of products to the new regulations. Moreover, there is a definite opportunity for useful lobbying to present clients' views on the form or content of proposed regulations before they ever enter into effect. In view of the fact that many of the drafts in progress cover rules which would have even greater impact on business practices than those regulations already issued, this opportunity for creative lobbying efforts is certainly not to be neglected.

### Social Legislation

Among the essential aims of the Treaty of Rome is the principle of the free movement of workers. This has largely become an established fact, and American businessmen are perfectly well aware that nationals of EEC member states can freely move from one country to another, whether as low-level secretarial or clerical help, or as senior management. This is in sharp contrast to the often strict national rules on work permits for nationals of other countries, including American employees when a parent company wants to send them to work for a European subsidiary.

Today there is increasing progress in the related field of the free movement of professionals. In recent years, regulations have been passed which enable the free movement of doc-

tors and dentists, and a number of medical auxiliary professions, throughout the EEC. The standards for the educational training of such professionals have likewise been harmonized. There is likewise serious study of harmonization of professional standards and requirements and a certain degree of progress towards the free movement of accountants, architects and lawyers. Since 1977, there has a directive which permits an EEC lawyer (who has the status in his country of one qualified to plead in court) to undertake specific legal activity in countries other than that in which he is admitted to the bar, but there has been only limited progress toward the right of establishment of a lawyer on a permanent basis in another country. Even though EEC rules on free movement of lawyers will have no direct effect on American lawyers, we are obviously interested in seeing what rules are ultimately developed, as they will lead to the creation and expansion of European law firms on a multi-national basis (with which conceivably American law firms may have some effective basis of collaboration).

In 1974, the Council of the Common Market adopted a Social Action Program, intended to emphasize the future importance of this area as a sphere of EEC activity. Probably the most remarkable achievements have been in progress toward equal rights for women. Prior to the mid-1970s, almost none of the EEC member states had significant legislation in this sector. Due to the impetus of EEC harmonization regulations, all the member states now have laws protecting the equal right of women to equal pay and compensation, social security, equal access to employment and job security. Not only are these rules now a matter of law throughout the EEC, but they are increasingly being enforced by the development of case law by national courts, with the guidance of the Court of Justice.

The Common Market authorities have also been active in other aspects of the Social Action Program. In recent years there have been

directives harmonizing the regulations for the protection of workers in the case of liquidation of an enterprise. Moreover, there is the famous Vredeling Proposal, under serious examination on the basis of a revised 1983 draft, which would grant employees of EEC subsidiaries of larger multinational companies, the right to receive on-going financial and management policy information, as well as the right of prior consultation before certain types of management decisions which might affect the workers. This is a particularly controversial proposal, and one which has been vigorously criticized by American multinationals with subsidiaries in Europe.

### General View of the EEC Today

While there is no question but that the institutions of the EEC face serious issues of growth or stagnation, and the press commonly gives ample coverage to these, there is also no question but that the civil service of the EEC, responsible for the development and implementation of legislation, is constantly active. An ever-increasing volume of legislation and case law makes it important for the international business lawyer to attain at least a certain level of understanding of EEC rules today, and the capability to do intelligent research and review of EEC legal sources.

Hence, it has become increasingly important that there should be programs which attempt to provide an in-depth survey of EEC law. The antitrust and trade sectors are those of obvious and growing importance, but many other areas are likewise significant, particularly to counsel for the American multinational which has manufacturing subsidiaries implanted in Europe. Accordingly, a program such as the seminars which are being developed by the Fordham Center of European Community Law and International Antitrust is extremely timely and can be seen as of great utility in the development of international business law skills for the American practitioner today.

## Anthony Laura

(Continued from page 6)

### 4. What has the SBA done effectively over the past year?

It is fair to assert that the SBA's effectiveness, like most other's, was hindered by the continuous construction during the past year. Despite the annoyance, SBA has been especially effective in several areas. First year orientation went off without a hitch, and the Boat Ride was its usual success. Now that the cafeteria is usable, Tangs have been sensational (it should be noted, as Dean Young will verify, that neither Loyola Mall nor Pope Aud. was available to us for Tangs). SBA also contributed in full force at the Dedication, assisting Deans Reilly and Young in one of Fordham Law's most prestigious events. Other major SBA deeds have been a smoothly run basketball league and the effective management of over \$25,000 of available funds. In closing, many individual SBA officers and reps have effectively tackled the more mundane problems that article daily at the Law School, too numerous to mention here.

5. Do you think that FLS students are happy with the incumbent SBA, and whatever the opinions, are they justified? Admittedly, there has been some dissatisfaction with SBA this year. The lack of Tangs during the 1st semester was a source of dissatisfaction, but again, that was beyond SBA's control. General student apathy also causes dissatisfaction, and next year I will make certain that SBA changes that apathy to confidence and satisfaction. Total student involvement will be a major goal of my Administration.

### 6. Do you think the SBA should sponsor social functions besides TANGs and the Boat Ride?

Considering Fordham's location, the SBA's non-use of Lincoln Center amazes me. As far as next year is concerned, I have already contacted officials at the Philharmonic concerning student discount seating. More of the same should be done at The Met. Problems of a commuter school hamper the effectiveness of "group events," but this should not preclude SBA from offering such opportunities to those who are willing. In addition, the success of the "Deans' Cocktail Party" tells me that similar Atrial events can be big successes, and such avenues should be explored.

### 7. In what specific ways will you improve the SBAs relationship with the administration?

The SBA President's personal relationship with FLS Administrators bears greatly on SBA's overall relationship with the Administration. My term as Treasurer has given me great opportunity to develop those necessary relationships. My rapport with the Deans and many Faculty members makes me confident that I have their respect and their ears. The Administration appreciates and rewards clearly prepared arguments, and though their doors are always open, I will only enter prepared and effective.

### 8. What other new ideas would you put into effect?

I find it rather obvious that there is not enough student input into SBA. Thus, I plan to have monthly Forum-like meetings where all are invited to share their views. Though all SBA meetings are open to everyone, an opportunity to be heard in such regular meetings is often not available. The Forum meetings will solve that problem. I also strongly urge trimming the fat from the elected body of SBA, and having

only two reps from each division who are truly interested in the success of SBA. Newsletters will also be distributed bi-weekly, keeping all of us abreast of current matters of interest (as done now in 1A by my running mate Kathy Karavellas).

### 9. When will the student directory be published?

This year's publisher received the final order for the Directory on Feb. 21, and it should be available before elections. Please be aware that last year's elected Secretary resigned during the 1st semester, without beginning work on the Directory, and Mary Tom was forced to start well behind schedule. In addition, the publisher has not been cooperative. All this will be avoided next year, because a committee headed by our new Secretary will be formed right after elections to find another publisher and iron out all administrative details before the start of next semester. When all new addresses are submitted in August, the Committee will get started on a manuscript for the printer. Such a schedule will make the 85-86 Directory available in early October at the latest.

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Michael Lazan

## STUDENT BAR ASSOCIATION MEETING MINUTES FEBRUARY 20, 1985

1. The Keefe Award is awarded by student at graduation to the faculty member or organization distinguished by their service and dedication to the student body. Any student can submit nominations to their SBA representative.
2. Contributions to the Ethiopian Relief campaign are being sought.
3. The Career Planning & Placement Center is gathering questions that second year students are asking about their summer employment that can be answered through the CPPC by the firms, e.g. How many hours is a summer associate expected to work at a large NY law firm? Students can submit questions to the CPPC.
4. St. Paul's church will be seeking contributions to aid their soup kitchen and meal plans. Details will be posted.
5. The Apartment Exchange Program is to assist people with New York City apartments who won't be in N.Y. this summer, or who are seeking apartments. If you are interested in the details, see Maureen Provost in the CPPC.
6. All class Presidents should submit a list of required courses to the SBA office, so exam copies can be made.
7. The next TANG is March 14th.
8. Elections for the SBA Executive Board will be held March 12-14.
9. The next SBA meeting is on March 6 at 5:30.
10. The student faculty committee will be meeting on February 27th at 5:15, for all class Presidents.



# Fordham Law Student In Federal Suit Against State University

BY MICHELLE S. LENZMEIER

In an Order of December 26, 1984, Federal District Court Judge Richard F. Freeman denied dismissal of a suit against five Georgia State University administrators. It was the administrators' second, and final, attempt — the first being on December 21, 1983 — to dismiss by motion the suit brought against them on June 6, 1982, by Jeffrey M. Duban.

Duban, a second year law student at Fordham, received his B.A. and M.A. from Brown University and his Ph.D. in classics from The Johns Hopkins University. He joined the Georgia State University faculty in 1978 as an assistant professor of foreign languages, with primary teaching responsibilities in classics. Initially enrolled at Emory University Law School, Duban transferred to Fordham when his wife received a job offer in the New York City area.

In May 1982, the promotion and tenure committee of the Department of Foreign Languages recommended Duban for promotion to associate professor with tenure. The departmental committee conveyed its recommendation to the Dean's advisory committee on promotion and tenure for review at the college level.

In August 1982, while Duban's candidacy was still pending before the Dean's advisory committee, the Dean issued Duban a letter of non-renewal. The letter was to be effective as of June 1983, the end of the academic year then commencing. Duban claims that the letter was issued in response to criticism, voiced shortly before the letter's issuance, on matters of public concern relevant to the students of classics offerings at the public university.

In December 1982, the dean's advisory committee recommended Duban for promotion to associate professor with tenure. The committee reached its decision based on the positive recommendation of Duban's departmental committee, the positive reports of outside evaluators, and its own review of Duban's dossier.

The Dean, however, refused to consider the committee's recommendation, on grounds

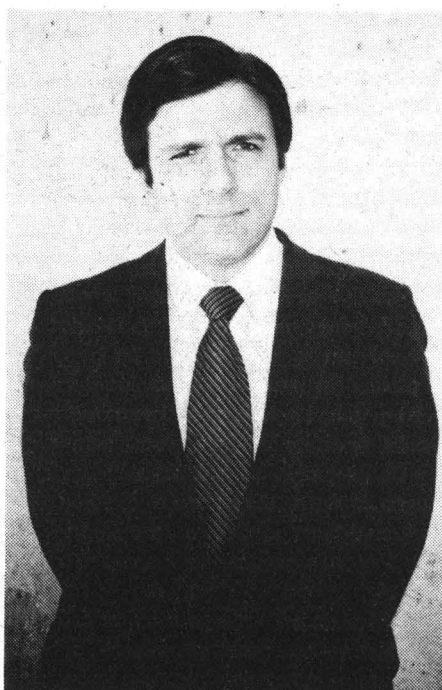
that his letter of non-renewal, issued even as promotion and tenure consideration was underway, would take automatic precedence over any committee recommendation. Though it is within the Dean's discretion to retract a previously issued letter of nonrenewal, the Dean had informed Duban from the outset that the letter was final and irrevocable. Duban protested that the Dean's action entirely mooted the promotion and tenure process, while setting a dangerous precedent for academic freedom. The Dean maintained that he was motivated solely by budgetary considerations.

While the Dean is in no way bound by a recommendation from his advisory committee, he is at least obligated to consider it. When the Dean gives a professor notice **before** receiving this recommendation, he asserts a questionable prerogative to preemptorily foreclose the promotion and tenure consideration of any candidate for any reason. In cases where the Dean exercise his unquestioned prerogative of refusing a positive recommendation, the candidate not only finishes the academic year in progress, but also receives an additional "grace year," thereafter. Duban is claiming the salary of that year's employment as an element of his damages.

Having failed to acquire redress from the Dean, Duban sought relief from the Georgia State University Vice President of Academic Affairs, Provost, and President. Review of the Dean's decision was then sought, and denied, from the Board of Regents in May 1983.

Having exhausted all internal administrative remedies, Duban filed suit on two federal and three pendent state claims: (1) violation of free speech under the first amendment, (2) lack of due process under the fourteenth amendment, (3) breach of contract, (4) fraud, slander and misrepresentation, and (5) unfair competition (by one competitor to eliminate another). Following Judge Freeman's Order of December 26, 1984, all but the second claim will be tried.

During the pretrial stages, Duban's attorney subpoenaed and examined GSU



Jeffrey Duban

Trial date has been requested for June. Counsel for Plaintiff Duban is Halsey G. Knapp, Jr., of Arnall, Golden & Gregory of Atlanta, Counsel for the defendants is Alfred documents, including correspondences pertaining to Duban that had circulated among university administrators. Seven depositions were taken against the five named defendants and two additional GSU administrators. Duban's own deposition was taken on the main claim as well as on a counterclaim alleging libel filed against him by one of the defendants.

Named as codefendants in the federal suit are Marion L. Kuntz, professor of classics and former chairman of The Foreign Language Department; Clyde W. Faulkner, Dean of the College of Arts and Sciences; Thomas B. Brewer, Vice President for Academic Affairs; William M. Suttles, Executive Vice President and Provost, and Noah Langdale, Jr., President.

L. Evans, Jr., Senior Assistant Attorney General. Counsel on the counterclaim for defendant Marion L. Kuntz is Charles H. Hyatt of Decatur.

In a separate action commenced on December 9, 1983, in superior Court of DeKalb County, State of Georgia, Marion L. Kuntz, defendant in the federal action, refiled, as plaintiff in state court, her prior federal counterclaim. In response, Duban, plaintiff in the federal action, refiled, as defendant in state court, his prior federal claim (though, in the state action, limiting it to state court plaintiff Kuntz).

The suit has practically required a change in professions for Duban, as he would probably have been hard pressed to continue in the teaching profession after taking so publicized a stand against the university in federal court. It was Duban's Atlanta attorney who first suggested that he apply to law school, because of the grasp he felt Duban had of the issues in the case. Duban applied and was accepted at Emory University School of Law just as the suit was getting underway. He said that, "Having a law suit while being a law student is like having your own personal laboratory experiment. Law school and lawsuit have gone hand in hand, and I cannot imagine one without the other."

When asked what courses were especially illuminating vis-a-vis the individual elements of his suit, he mentioned **Civil Procedure** for the federal and pendent state jurisdiction; **Remedies**, for the full range of compensatory, punitive, and emotional remedies he is seeking; **Evidence**, for the documents and the questions allowable at trial; and **Contracts** for an understanding of how one can look to the implied terms of a contract and not solely to what appears within the "four corners."

While individual courses have been helpful in shedding light on the legal theory of the suit and in helping Duban to follow and contribute to it, Duban is less certain as to how the regimen of preparing for and taking law school exams contributes to the skills needed for what he has seen of practice in the "real world."



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## Retrospective:

# Dean Feerick's Role In The Twenty-Fifth Amendment

(Continued from page 1)

Dean Feerick spent a great deal of time testifying in Washington before the Bayh Committee and the Judiciary Committees of both houses of Congress. After playing a role in drafting its specific language, he made a number of oral and written endorsements of the amendment. Later on, he continued to work with the ABA Committee as it assisted the states in the ratification process.

Before the amendment passed Congress, Dean Feerick had also authored a book on presidential disability and succession, *From Failing Hands*. This work, which incorporated the research connected with his two law review articles, was in addition the result of further research by him and his wife, Emalie. Following the congressional approval of the amendment, he wrote another article for the *Fordham Law Review*, *The Proposed Twenty-Fifth Amendment to the Constitution*. (December 1965) Finally, he authored another major book, *The Twenty-Fifth Amendment*, which was published in 1975. It traced the amendment's history from the time of its ratification onward, and offered an analysis of its implementation during the Watergate crisis.

In light of the amendment's historical importance and its vital function in a nuclear age, *The Advocate* decided to interview Dean Feerick to learn something more about his role in bringing about the consensus to incorporate it into the U.S. Constitution. We also focused on a number of related questions, such as the meaning of specific clauses in the amendment and what alternative provisions might have been used. In the process, we traced generally his interest in the presidency and vice-presidency and his other involvement with the formulation of public policy relevant to these areas.

For a starting point, we must look back to Dean Feerick's undergraduate years at Fordham. There he became a political science major, having developed an interest in government, U.S. Government in particular. This interest was sustained during law school, particularly in the area of constitutional law, a subject in which he had in fact taken his first courses at the undergraduate level.

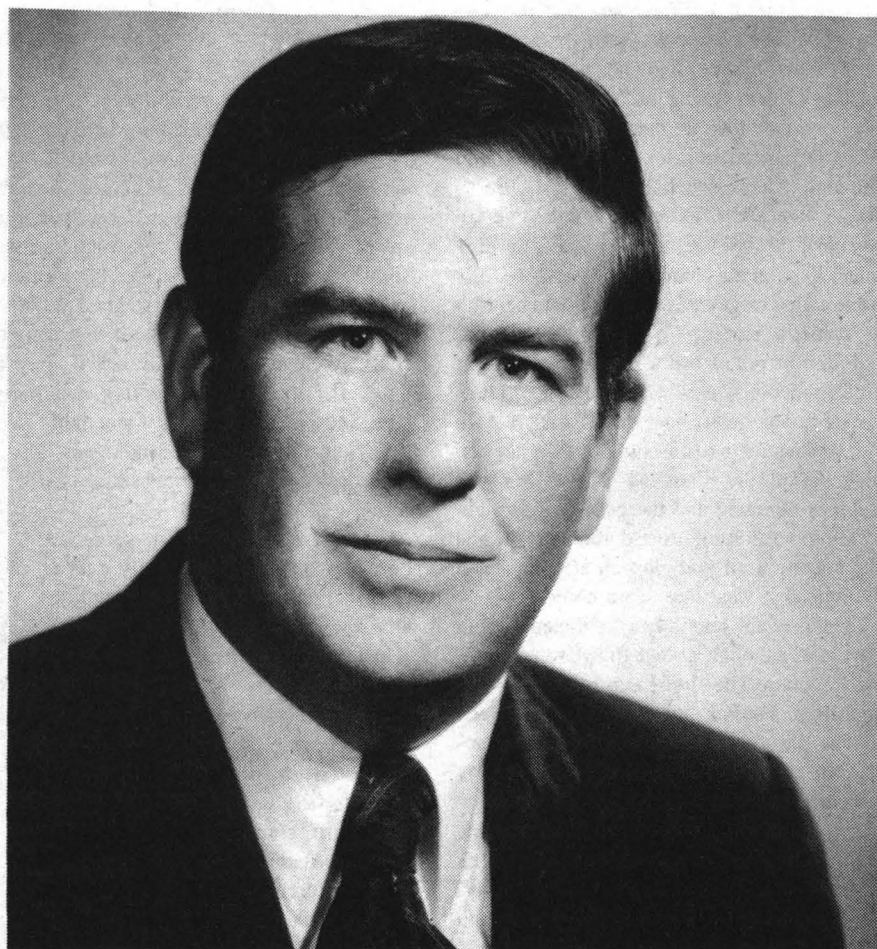
When he graduated from law school, Dean Feerick wanted to write a law review article in the area of constitutional law. Initially, he did not have a focus.

"Then I came upon an article on the subject of presidential disability, in one of the law journals, I think, and that question fascinated me. It involved constitutional law, the constitution, the presidency, government - it seemed like an interesting area to do more in. I then went about researching that area for a good two years, and did an article for the *Fordham Law Review*, which was the culmination of my research and investigation in that area. The article appeared in October 1963."

His article focused mainly on these questions: What does the constitution provide? What was it intended to provide? (since it was not clear); and what is the best way to deal with the problem?

"As a result of that research, I became very familiar with the office of vice-president, because that was very much connected with the basic question of presidential disability - the role of the vice-president, succession to the presidency - and I decided to do a second article, and the second article was also done for the *Fordham Law Review*. I think it appeared in early 1964, and that was on the vice-presidency."

Shortly thereafter, Professor Leonard Manning, the moderator of the *Law Review*, suggested that Dean Feerick combine the articles into a book. At the end of 1964, the manuscript of *From Failing Hands* was complete. This work also reflected additional part time involvement by him and full time involvement by his wife, who was then expecting their first child. She spent a great deal of the researching newspaper articles back to the 1790's, with an emphasis on debates in Congress.



Dean Feerick

Following the publication of their first work, the Feericks wrote a book on the vice-presidency for high school students. This book, which is updated to the present time, contains biographical sketches of the vice-presidents.

At the time of President Kennedy's assassination in November of 1963, Dean Feerick's first law review article had been out for three or four weeks. It received a considerable amount of attention, for obvious reasons. People were asking, suppose Kennedy hadn't died? Suppose he had remained alive, but wasn't functioning? A one inch difference in the flight of the bullet would have brought about such a situation. There were the problems of who was to determine whether the president is disabled, and dealing with a situation where the president says he has recovered.

By September of 1964, the Senate had proposed a constitutional amendment on presidential succession and disability, and the House did likewise in 1965. *From Failing Hands* appeared in January, 1965, and provided a research tool for those interested in the subject. At the time, there were not many other comparable works.

Clearly, the Kennedy assassination was the catalyst in convincing Congress of the urgency for a succession and disability amendment. It would be untrue, however, to say that this had not been of concern at prior times in our history. Senator Estes Kefauver had been Senator Bayh's predecessor as chairman of the Subcommittee on Presidential Succession, and outlook and that of his colleagues had certainly been affected by the three serious illnesses suffered by President Eisenhower. There was a historical perspective, too, which is brought to light most dramatically in the cases of Presidents Wilson and Roosevelt.

In his book *Second Choice*, Michael V. DiSalle pointed out that the resolution of the issue of presidential disability can have consequences of the greatest magnitude. In discussing President Roosevelt's final days in office immediately prior to his death, DiSalle made the following observation.

FDR's American colleagues at the Yalta Conference have said that the President had difficulty concentrating while great decisions were being made by Stalin, Churchill, and him, and that he apparently agreed to arrangements that would have shocked him a year earlier. Robert Murphy, Roosevelt's diplomatic

troubleshooter in wartime Europe and North Africa, in describing his last interview with FDR shortly after his return from Yalta and only a month before his death, tells how shocked he was at the President's appearance. Murphy found FDR "unable to discuss serious matters, in no condition to offer balanced judgements on the great questions of war and peace."

DiSalle also discussed the situation where Woodrow Wilson was being held incommunicado by his wife, physician and secretary after having suffered a cerebral lesion. It had been suggested that Vice-President Thomas Marshall assert himself and pick up the reins. Marshall refused, unless the President were declared medically incapable, which Admiral Grayson, Wilson's physician and close friend, would not do. The Twenty-Fifth Amendment, of course, allows the vice-president and a majority of the cabinet to make this determination.

With all Marshall's quirks and amiable grumblings, had the Twenty-Fifth Amendment been in effect in 1919 permitting him to become acting President of the United States, the history of the world might have been changed. While Marshall was just as enthusiastic about the League of Nations as Wilson, he declared that he would have accepted the Lodge reservations which Wilson stubbornly rejected, and thus might have saved the League from defeat in the Senate. With the power and prestige of the United States in Geneva, would the League have caved in before the bullying actions of Japan in Manchuria, Mussolini in Ethiopia, and Hitler from the occupation of the Rhineland onward? Would there in fact have been a Second World War?

As it happened, the Kennedy assassination triggered the show of concern which brought about the amendment's enactment. In addition to stirring things up in the Congress and the press, it led to the establishment of the 12-man Committee on Presidential Succession and Inability by the American Bar Association. Aside from Dean Feerick, the members included Former Attorney General Herbert Brownell, future Supreme Court Justice Lewis Powell, and several professors and former ABA Presidents.

During a two day period in January 1964, the Committee reached a consensus as to a series of recommendations on what the substance of the Twenty-Fifth Amendment should do. This consensus was similar to that held by members of the Bayh Committee at the time. Dean Feerick says that the relationship between the two committees was "very close," and that he and many others had input as to the actual language of the amendment.

"My job was to work with the Bayh Committee, to assist them in connection with the drafting of the amendment, in connection with answering questions people had about the amendment, and once Congress had proposed the amendment in 1965, to assist in the ratification of the amendment."

"I was a practicing lawyer - this was sort of my pro bono work - that's how it was viewed by my law firm. For me it was more than pro bono work - it was something I enjoyed doing. I felt it was something more important - something in the public interest. It's like somebody saying, what a sacrifice you made, but if you enjoy what you're doing it's no sacrifice."

The amendment's first test came during the Watergate crisis, when Vice-President Agnew resigned while President Nixon was being confronted by possible impeachment proceedings. Nixon nominated Congressman Gerald Ford to succeed Agnew under the amendment's succession provisions, and Ford was confirmed by Congress, thus becoming our first appointed vice-president. Subsequently, Nixon resigned and Ford became the thirty-eighth president. Ford then nominated Nelson Rockefeller to fill the vacant vice-presidential slot, and this nomination was also confirmed under the procedures outlined by the Twenty-Fifth Amendment.

"I was very sad during that whole period. The Presidency of the United States was damaged, though maybe strengthened at the same time, and I was also sad about the mistakes that had been made by lawyers and other government officials. That was my dominant feeling - I didn't have any positive feelings about the amendment as such other than it had to do its job under the circumstances, and I thought it did its job very well, but I would have preferred the amendment never having to work during that period."

Shortly after the attempt on President Reagan's life in 1981, the amendment became relevant once again. The president was put under anesthesia, and the vice-president and cabinet were put on alert. In spite of Secretary Haig's "inartful communicating," Dean Feerick believes the Twenty-Fifth Amendment provided an effective mechanism for dealing with the situation at hand.

"The Twenty-Fifth Amendment is pretty clear. It says that the president, if he's able to communicate or make a decision that he's disabled, can say he's disabled. Reagan, because he was conscious for a good part of time before he was put under anesthesia, could have made a decision that he was disabled, in which case the vice-president assumes the duties of the office. In the absence of that, the vice-president and the cabinet have the authority to make that decision."

"Everyone was in communication - the cabinet in Washington assembled in the White House, and Bush was on a plane in communication with the White House, so there would have been an ability to make such a decision if it was necessary, but a judgment was made that, in the whole situation, it wasn't necessary. From my reading of it, everything was handled very well, very responsibly."

As for the role of the Secretary of Defense, Dean Feerick feels it is clearly established, and that the Secretary would be in a position to make strategic decisions. But he feels the decision to commit the armed forces of the U.S. does not pass to the Secretary in a situation where the president is disabled; the vice-president would

(Continued on page 12)



# Subterranean Casenote Blues

BY PETER BIGING

*The night grows long, the mind grows weary, the casenote never ends. Late at night, down in the depths of the library, a thought turns into a dream.*

The hour was late, but time had ceased to matter as we descended into the depths. The place was old, wretchedly old and gnarled, with a dank musty smell of the deep deep earth. I was to function here, nothing else, till my debt was paid. The soles of my shoes scraped the rough stone of the stairs as we wound down. I cried out, as I knew others had done before, as I had heard before, as I had ignored so many times before as the product of a work weary mind. My cries were answered with searing cackles of laughter from the one who pushed me further down into the depths. In that awful moment of knowing one's fate is sealed, knowing that your life has been irrevocably altered, and there is nothing to do, nothing save crying out in wails of unspeakable despair. I felt the past few months float by and I tried to understand.

"Hey man, you hear the new rules?"  
 "What's that?"  
 "Better bring your flashlight, cause you're going underground."  
 "Huh?";  
 "You're going downtown boy—I.L.J. and U.L.J. been declared illegal in these here parts."

That's how it started, or rather, how I first learned about it. In fact, I had known all along that something was amiss, something dreadfully wrong. Only I couldn't place it. I had been lucky enough to be selected to the staff of the Urban Law Journal in the summer of 1984, or so I thought, until I found that writing a casenote entailed endless hours crammed behind a stack of books trying to find a solution to a desperate legal crisis threatening the security of the free world. Of course that was after you found said problem. Nevertheless, I had, after much perserverance and a late in the game preemption, found a really hot topic which I proceeded to bore every one of my friends with each minute detail of. Having found a home on 4s (the library's 4th level), I felt secure and satisfied in the comfort of knowing I had a large task ahead, but one which a long and consistent effort would surely whittle away.

Hence, when the new rule was handed down that International Law Journal and Urban Law Journal staffers had to move their books and research down to the lower levels of the library, I was unconcerned. Sure, Law Review was getting preferential treatment. Sure, one could argue that if a caste system hadn't been in effect prior to the enactment of "the Rule" it sure as heck was now. But so what, I thought. Captain Kirk will save us. Remember the Star Trek episode where the elite society lived in the clouds and these dirty little people called troglodites worked down beneath the planet's surface in the mines? Well, troglodite or not, I had a note to write and I didn't particularly care where I had to do it as long as it was quiet. And that it was as each day I walked down to the softly lit lower levels. Time seemed to float by as the copying machines hummed and the perpetual twilight seemed to wrap itself around you in a soft and silky cocoon until you glanced at your watch and noticed it was time to go home.

Things went smoothly after the enactment of the rule, although strange things were beginning to occur. The first I can recall, was the night Dean Feerick got "ill" during a Law Review party. "Ill" seemed rather inappropriate at the time because he left the party early, after chatting with some of the Law Review editors, looking as if he had been quite literally scared to death. Little heed was taken of the incident though, because several days later the Dean was back at work and laughing off a case of indigestion. Barely noticeable was the slight, in fact almost imperceptible facial twitch beginning at the corner of the right side of his mouth. Uncharacteristic also, was his inability to look students in the eye.

It was soon after this incident that the construction crews began appearing again. This seemed rather strange because the new wing of the Law School had been completed several months before. Nevertheless, they were here and no one questioned it, until it was too late.

"Looks like they're building a new dumbwaiter."  
 "Yeah, I believe you're right. But where does it go?"  
 "Don't know where it goes, but I know where it starts - Law Review Office."  
 "But what for?"

"Still got your flashlight?"  
 "Yeah, why?"  
 "Hope you got them rechargeable kind batteries."

And so the conversation went. The dumbwaiter was installed and led nowhere but down. Construction began, we could hear it, but no one knew where and what of. I could swear they were building something underground, but I wasn't sure. In time the construction ended. And the horror began. It started innocently, in fact rather politely. We all laughed about it at lunch one day when we heard that someone from Law Review had actually asked a member of the ILJ to do his footnoting assignment. "Imagine that," I said, "as if you didn't have your own footnoting assignments." "What gall!" spit out the guy sitting next to me. "Although I can't say I'm surprised, those guys have been lording it over us since that party. Something ought to be done." "He asked very politely," protested the ILJ member. "He shouldn't have asked at all," barked out the guy sitting next to me in response as thousands of tiny globules of spittle flew out from his mouth in a perfect arc, coming softly to their rest in the ILJ member's soup like droplets of rain in an algae covered pool. "Kind of neat," I thought as I pushed her soup away from her reach. "Where in God's name does the dumbwaiter go," someone muttered under his breath.

Later that day, after the lunchtime conversation, the first ILJ member vanished. Nothing was said. Nothing was done. She just wasn't here any more. Her research, consisting of various treatises and reporters, was neatly stacked back up on the shelves by a couple of guys from Law Review. They worked quietly and with some trepidation, then they drifted off. The "twitch", as it had come to be called, was even more pronounced that day. There was a lot of talk, a lot of people wondering why, and then things settled down. I had all but forgotten about the incident several days later when late at night, down in the stacks, I heard the hum. It was a

vile sound, piercing my soft cocoon of white noise with such a wrenching violence that the hair on the back of my neck stood on end. Yet it was not loud, or even very different from many other sounds the 20th Century has made us all grow accustomed to. Nonetheless it struck a nerve, touched my inner soul in a place where no man should be touched. Then I heard the screams. I looked wildly, frantically about me, but no one had even looked up from his books. Was it all in my mind? What had I heard that had my knees quivering and sweat blossoming on my brow? It was silent now, that I knew. But what of the screams? They were muffled, as if they were coming from far, far away. Could it merely be the squalls of a tiny mouse? What else could it have been? I packed my books and went home.

The next day, two more ILJ members had gone. Within the month, four more had disappeared along with three members of the ULJ. The dumbwaiter, with its vile, sickening sound, kept running down and up, down and up. Now there was lots of talk, but nothing was being done. What could be done? What, if anything, was to be done?

Down in the stacks, working late at night, I began to feel very alone. In fact I was, but the knowledge that there were others in the library working above had always made the notion of "being alone" seem rather silly. But now, with the sound of that incessant dumbwaiter screeching in my ears, and the imagined screams tearing at my insides - now, I felt very alone. And also afraid. I forced myself to concentrate on my work. My first draft was almost finished. When it was done I could stack my books and get out of here. Out before someone noted that I had disappeared also, out before some guys from Law Review quietly restacked my books.

But then it was too late. I knew it when I heard the footsteps. I looked up and saw their eyes and knew my turn had come. When they beckoned I followed. We passed through an unseen doorway to a stone staircase leading down. After what seemed like ages we reached our destination. Then I saw them, all of them, working feverishly, footnoting the work of others - others who now controlled my destiny. I cried out in a scream with a force I never before knew I was capable of. No one looked up from their books.

## Dean Feerick's Role In The Twenty-Fifth Amendment

(Continued from page 11)

have this prerogative, if he had succeeded to the office of the presidency. It is questionable in any event whether Secretary Weinberger meant that he did in fact have the authority to commit U.S. armed forces to action.

Since the amendment refers to the president being "unable to discharge the duties of his office," without further elaboration we asked Dean Feerick what sort of disabilities would be within its scope. For example, would psychiatric or organic illnesses be covered?

"There obviously would be some subjectivity involved in making that judgment. It's more than a medical question...the term 'disability' is not intended to be a term of limitation. It's basically intended to be an all encompassing term for all kinds of illnesses and ailments and situations which prevent a president from discharging the duties of his office."

Dean Feerick noted that the decision might depend on the context in which the government finds itself. For example, in a state of affairs in which there is an immediate danger to our national security, the requisite criteria for disability may be broader.

We also asked Dean Feerick about a situation where a presidential doctor refused to disclose information on a president's well being, citing the doctor-patient privilege. Would the Twenty-Fifth Amendment eclipse that privilege, on the basis of national security?

"I think that would be a difficult question, but I don't think the amendment really reaches that far. Whoever's entrusted with the decision

would be seeking what information they could. If the president didn't consent to the doctor's releasing the information, that would limit the facts upon which to base a decision. On the other hand, that might be relevant to what a decision should be - that there isn't cooperation and assistance from the president's office...I think it would give rise to a popular feeling that something is awry. But I don't think the amendment overrules the privilege." He pointed out that Presidents Reagan and Eisenhower went out of their way to release information when their conditions were under scrutiny.

Dean Feerick also discussed his ideas on some related questions, such as that of cabinet succession to the presidency versus succession in the House and Senate and his ideas for electoral reform. While he maintains his position stated in *The Twenty-Fifth Amendment* that cabinet succession is preferable to the present system, in which the Speaker of the House and President Pro Temp of the Senate are next in line after the vice-president, he sees no present movement toward amending the applicable federal statutes. He did in fact spend a considerable deal of time trying unsuccessfully to do away with the electoral college system for presidential elections, in favor of a popular vote.

"I spent another five years of my life working on the amendment that would have abolished the electoral college system. It was a similar group to which I was an advisor, set up by the

American Bar Association. The proposed amendment passed the House of Representatives by a very substantial vote, and came within five votes of passing the Senate."

Does he see any contradiction in his strong desire to institute a popular vote system in presidential elections and the fact that the amendment provides for an appointive vice-president who may become president?

"If you have a special election, how long would it take? Maybe six to nine months, and then there may not be much time left in the term." He thinks a special election would be too cumbersome and lead to many problems.

In nuclear age, would it have been preferable to have a succession law in the line of a federal statute rather than a constitutional amendment? After all, circumstances change, and a future development might cause observers to draw into question certain provisions of the amendment.

"Certainly circumstances could change, but the amendment itself has a lot of flexibility. It has certain details spelled into law that can only be changed by constitutional amendment. But it enables Congress to set up another mechanism replacing the cabinet if circumstances should suggest that the cabinet is not workable."

"On the other hand, I think there has been a philosophy expressed in the constitution that when you are dealing with the office of the president, and the powers and duties of the

president, you do not want to leave it to the political composition of Congress at the time. You want to get out of politics, and you want to protect that office because of the role it plays in our scheme of things, and you best protect it by spelling out a lot of details in the constitution."

As for any further developments in the Twenty-Fifth Amendment, Dean Feerick does not note anything in particular on occurring on the federal level. He added that, though there are always problems in the process of nominating vice-presidential candidates at the political conventions, he doesn't feel the mechanism of the amendment should be applicable in those settings.

On the state level, he mentioned that a number of states have adopted their own versions of the amendment to deal with the questions of gubernatorial disability and a vacancy in the office of lieutenant governor. In New York State, a proposed constitutional amendment deals with the question of the disability of the governor. Dean Feerick also feels that the amendment has been a positive force in moving a number of state governments to address problems and gaps in their mechanisms of succession.

1. Michael V. Disalle, *Second Choice* (New York, Hawthorn Books, Inc. 1966), pp. 235-6.
2. *Id.*, pp. 234-5.



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**Joanne Stevens -  
Fordham Representative**



# Towards A New Justice:

## Helping People Help Themselves

### - A Domestic Program

(Continued from page 7)

Kill our cities and we kill ourselves. Save our cities and we rejuvenate ourselves. Thus, an unequal education is not only unjust, it is anti-urban and anti-American.

So what do I propose? A very simple trade-off. Affirmative action exists to correct past wrongs. The greatest past wrong which still predominates is an unjust education system. Correct that wrong and we diminish the need for affirmative action. Granted, outright racial prejudice would still exist, but it always will. However, I believe the imposition of a just education system will over time minimize the effects of such prejudice and create a more just state.

Therefore, I propose equal funding per pupil in every school district within a state. Upon the implementation of such a program, no affirmative action program shall be allowed 20 years after the implementation. Since the education program will take some time to have any effect the need for affirmative action would probably last for at least one extra generation.

I have talked with some people who attended schools like Great Neck South, and of course they dislike the idea of losing aid. However, in an age of governmental austerity this loss is imperative. I am not asking for more money for an inner-city youth as compared with a suburban youth - I am only asking for what is equal. Even with equal funding the education received would not be equal. It is more difficult to attract good teachers to cities because of cities' unique problems - more violent schools, higher costs of living, more difficult teaching assignments, et cetera. Additionally, the basic costs of running a school - outside labor and goods are higher in the city. These conditions dictate greater money for city education than suburban education. However, right now I'd gladly settle for equality. If I could have any political wish in the world, I would ask for this program.

#### URBAN RENEWAL:

"Low income housing is a failure by definition and should be abolished." The words of Ronald Reagan? No! The words of Robert Altman. Yes. I haven't gone crazy and I do have some qualifications.

Enterprise zones - an almost good idea. Another in the long list of urban saviors like the dumbbell tenement, low-income housing and gentrification. Why do each fail? Usually for remarkably simple reasons. Dumbbell tenements failed because landlords were able to convert them into over-crowded housing. Low-income housing projects failed because they were low income and displayed as much as replaced. Any housing project that consists entirely of low income people will have - surprise - low income problems such as crime, lack of education and the like. Additionally, when replacing a slum with a housing project the people, displaced by construction, crowd into a new neighborhood leading to overcrowding and guess what - a new slum. Then when the tenements for the project come back you have two slums with one having a better physical plant ripe for rapid deterioration.

Gentrification also solves nothing, because it just forces people out of one neighborhood into another - overcrowding that new neighborhood. Meanwhile the gentrified neighborhood has a whole new clientele, and they're usually not low income. (Any yuppies want to buy a brownstone?)

Enterprise zones are more interesting because they are as close as government has ever come to considering the right solution. However, enterprise zones will fail in America especially under the proposed method of 600 zones (way too many, better to try a few first). Here's why.

First, enterprise is nice. Zones are not. Zones include and exclude. Let's examine how by using a hypothetical enterprise zone in the South Bronx (how about near Charlotte Street).

In this zone we want to put new business, by giving tax incentives. That's a good idea, but we have to ask who's going to work in the new business? Hopefully, local people. After all, the idea should help people, not a zone. If you hire local people they must meet certain qualifications. Probably a large number of them must be skilled. All must have basic education. The company must find the community trustworthy. Now, you may not know this but the South Bronx, like most slums, is not known as a bastion of skilled and educated people (especially since we have weak inner-city education). Additionally, what company will move into the zone, construct a facility, train and educate its workforce and maintain a security system adequate for its needs? Geez, that tax break better be pretty huge. I can't even foresee just constructing a facility and using non-local people. Why force your personnel to travel into an "unsafe" area? Why settle for an oasis in the middle of the desert when you can have the land of milk and honey?

What will happen with enterprise zones? Probably one of two things. Either business will abandon the area around the zone by moving into the zone, thus hurting the areas it left; or the zone will have some success, but will draw business away from the districts outside the zone, again hurting the outer areas. Enterprise zones are close, but "they ain't the real thing."

The real thing is "unslumming." Take the enterprise, forget the zone. Every slum has successful businesses already there. Take their success and let them build more success. Previously, trickle-downism has been reserved for the rich. Let's bring it to the ghetto. The plan is so simple, so Republican in theory it's almost frightening.

First, you find the small and medium sized successful businesses in the area. Next, you provide them with capital to expand by low interest loans. Since these are successful businessmen they should know how to manage this money better than an amateur. However, the low interest loan is conditioned upon hiring from within the community. This program does a number of things. Economic principles are taught since we have given a loan, not a grant. Community pride rises since any improvement is not via a handout, but a loan. Community unemployment drops. People have money. They spend it within the community. The multiplier effect spreads. People who were trained by the original shopkeepers, save and build their own businesses (with loan help from a revitalized Small Business Administration). Since people's conditions improve gradually, they stay within the neighborhood spending money on their neighborhood, gradually improving their neighborhood with no ruinous displacement. A community is rebuilt, it is unslummed - and the government never gives away a nickel in grant money.

Cynics will quickly think now - well, what's the difference between this and enterprise zones? This plan has no boundary lines. Obviously, some neighborhoods will get no assistance. Some neighborhoods should get some assistance; other will get a lot. However, there is no border line between benefit and no benefit like there is with an enterprise zone. Neighborhoods exist along a continuum; so should our plan.

Determining the amount of assistance will take some foresight. New York City has the perfect mechanism in its City Planning Commission and Community Planning Boards. The Community Boards can recommend certain loans with the City Planning Commission having final say. Other cities can set up their own mechanisms.

Three questions obviously pop up at this time. First, doesn't the Small Business Administration do this type of work right now? Second, how is such a program funded? Third, with so many homeless, how can any government just eliminate low income housing.

The Small Business Administration has

many problems. Thus, the Reagan Administration is seeking to disband it (the Reagan Administration never seeks to improve anything - it just eliminates). The S.B.A.'s major problems of being high risk and patronage wracked have led to its demise. Hopefully, a watching could prevent the ruinous patronage, while unslumming decreases the economic risks.

Funding for the program can be accomplished through funds previously earmarked for low income housing. However, we cannot simply eliminate low income housing due to the present shortage of housing and surplus of homeless. Thus, I propose a gradual siphoning of funds from low income housing to our unslumming program. While these projects decline in number due to decreased funding, the community should be experiencing economic growth via unslumming.

If you wish to read more on this idea I suggest you read Jane Jacobs' "The Death and Life of Great American Cities." (My ideas germinate from hers.) "Unslumming" is a great idea. It's imaginative, it's innovative, it's low cost, it's low risk and it probably will never be adopted.

#### CRIME:

This issue begs to be addressed by any politician who is willing to advocate a program of "no free lunch" law enforcement. Whichever political party first addresses this issue properly will gain a bundle of votes in our urban areas. But first, let's get rid of the panaceas.

I'm tired of hearing about the death penalty. The death penalty never caught a criminal, nor brought about a conviction. I'm tired of hearing about the exclusionary rule - it applies to so few cases it's almost not worth mentioning. Determinant sentencing sounds interesting, but it's no solution. The key to stopping crime is to deter criminals: if they are not deterred they must be caught, if they are caught they must be convicted, and if they are convicted they must be punished. There are no simple solutions - only expensive ones, and to implement solutions we must have money. To get money, we must raise taxes.

Yes, I'm proposing the old liberal solution - raise money to start a program. Yet, even conservatives must recognize the uniqueness of the situation. People form government to protect themselves from the state of nature - a conceptually brutal existence. People give up some of their freedom for this protection. If government does not protect its people, then it is failing to perform its primary responsibility. In order for government to perform its most basic function it may be necessary to raise taxes. But let's see if this is a tiresome burden. Let's say every person in New York State was taxed on his payroll an average of \$1.00 more per week (with a family of 6 paying \$6.00 and the like). Eighteen million dollars times 52 weeks is almost one billion dollars. One Billion dollars to fight crime! One Billion dollars spent on a program that no one can claim is geared towards a special interest. The question to ask people is simple: "are you willing to pay \$1.00 more per week to fight crime and be safer?" I'm willing to take bets on the answer.

How do we use the money? Men like Adam Walinsky and Ben Ward know better than me. Personally, I'd like to see more police, more jail space, a fight on drugs and a better run court system. That calls for a lot of money - but hey, we've got one billion dollars.

A Federal initiative wouldn't hurt either. Republicans and Democrats in Congress have always felt that crime should be handled exclusively by localities. What short-sighted vision. The Federal government has to take the lead and coordinate efforts against such crimes as drug trafficking, racketeering and smuggling. The Federal agencies presently do the best they can, but they deserve more money. Additionally, since localities fight many of the same federal crime problems (such as the war on drugs), they too deserve some federal

assistance, probably in the form of a block grant.

Yes, this all costs money - and you have to pay for it. There's no free lunch - you can either let the present state of criminal justice work like a joke or you can spend a few dollars a week and be safe again. I'll spend the money. **QWL:**

Senator Gary Hart gave Quality of Work-Life programs (QWL) about half a page in his "New Ideas" book "A New Democracy." Maybe that's because the idea isn't his. It's not even American. Nor is it really Japanese, though the Japanese are the best at it. Many people claim not to understand QWL. The truth is everyone does understand, but really do not want to understand QWL.

Quite simply, QWL is communication, teamwork, consideration and democratization of the work place. Only the democratization concept is new and even this is only a partial step. The whole idea of QWL is the promotion of communication between labor and management in order to enhance worker satisfaction and company performance. It can be done through the use of team projects, meetings with the workers, responsibility sharing or whatever method fits the company. The goal is to get labor and management talking about common problems so they can pull together rather than apart. The idea is so radical that those liberals at General Motors have introduced and expanded it.

The idea is fundamentally sound. Labor gets what it claims it wants more than anything else - job satisfaction and dignity. Management gets a happy workforce and usually increased productivity. So why do more than 50% of all QWL programs fail? Lots of reasons.

First of all, QWL is often seen as a last gasp measure to save a company. Labor and management pull together and they sometimes pull off their miracle. When the crisis has past, labor wants its share and sometimes more. Management remembers the past crisis and is cautious, sometimes too much so. QWL dies of its own success, when the bickering begins all over again. Why? Because QWL was started as a last chance measure, not as a program upon which both sides would build. When the company received new life, everyone assumed the status of business as usual. This situation gives us the first lesson of QWL - start it when things are going well. If well done QWL will be building block for further success, and an aide in times of stress. If unsuccessful QWL may be dropped in favor of the old successful formula.

QWL also has problems due to American labor history. Unions and management seem to enjoy the adversarial approach, thinking it pleases their respective constituencies to know their leaders are "tough." Well, the Japanese leadership is understanding instead. Right now, our toughness is blindness compared with their understanding's enlightenment. Union and management have some soul searching to do.

A final problem with QWL is education. The people who will implement QWL are supervisors, not CEOs. Many of the people need education on QWL before participating in such a program. Others will need to be reassigned.

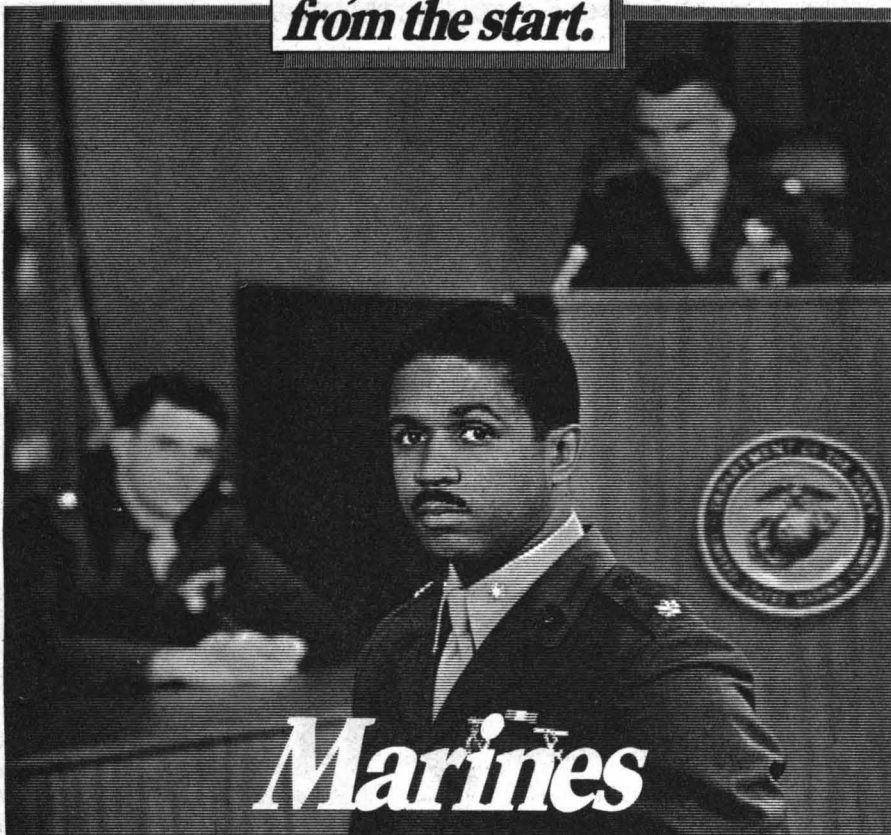
The program I offer for QWL addresses only that final problem. No governmental program can tell management when to implement QWL. Nor can government force union and management to re-examine their relationship. However, government can help business in its implementation of QWL by helping educate the supervisors and workers on QWL. This can be done through the use of tax deductions, credits or outright grants. However done, I think QWL should be initiated. After all, what's good for G.M. is good for the country.

By Robert Altman

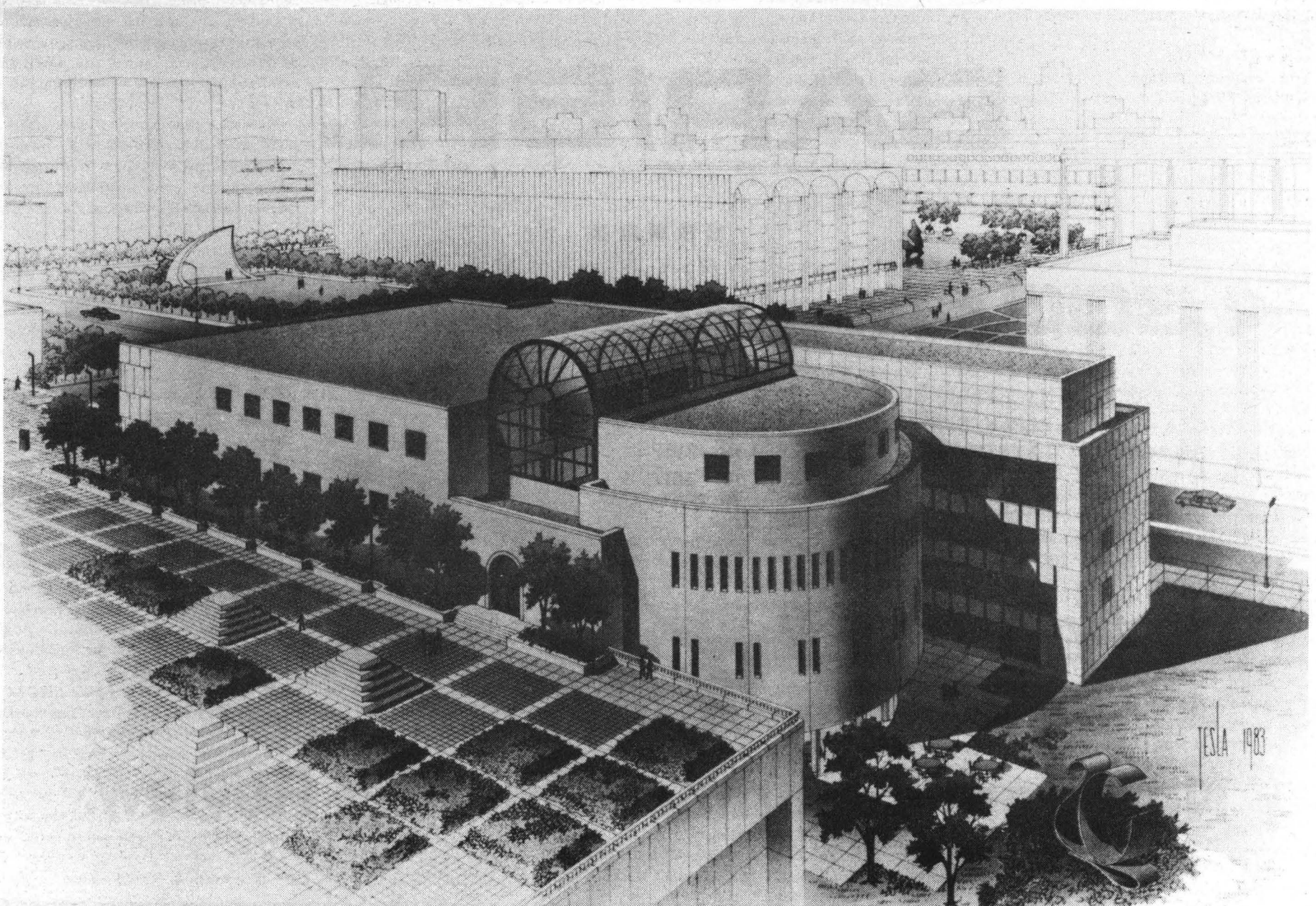
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